

Amended and Restated Development Agreement

This Amended and Restated Development Agreement (“Agreement”) is entered into as of _____, 2021 (the “Effective Date”) by and between the **City of Burlington**, a Vermont municipal corporation (the “City”) and **BTC Mall Associates LLC**, a Delaware limited liability company (“Owner”). The City and Owner are sometimes referred to herein individually as a “Party” and collectively as the “Parties.”

Background

- A. Owner owns certain real property depicted as Parcel 2, Parcel 4 and Parcel 5 on a plan entitled “Lot Line Adjustment for BTC Mall Associates LLC, 101 Cherry Street, Burlington, Vermont” prepared by LATITUDES Land Surveying dated January 9, 2017, last revised January 24, 2017, consisting of 1 sheet, recorded in Map Slide 533B of the City of Burlington Land Records (the “Plan”), numbered 49 Church Street, Burlington, Vermont, Parcel No. 044-4-004-000 and 75 Cherry Street, Burlington, Vermont, Parcel No. 044-4-033-000 (together, the “Larger BTC Property”). The Larger BTC Property is improved with a portion of a retail shopping mall; it was formerly improved with a large retail shopping mall known as “Burlington Town Center” and a parking garage. Parcel 2, as depicted on the Plan, is referred to herein as the “BTC Property”.
- B. City owns, as public right of way, certain real property depicted as Parcel 1 and Parcel 3 on the Plan by virtue of the Warranty Deed of Owner to the City dated as of the Effective Date and to be recorded in the City of Burlington Land Records (respectively, “Parcel 1” and “Parcel 3” and collectively, the “City Property”).
- C. The Burlington Town Center mall opened in 1976 under the name “Burlington Square Mall” in conjunction with 1960s-era urban renewal development in the City of Burlington. While the mall originally expanded the retail base of the City’s downtown, for several years it has been a chronic underperformer economically. The site is also a barrier to north-south connectivity, and has precluded the growth of a vibrant street life on Bank Street and Cherry Street.
- D. The City has undertaken a community planning process known as “*planBTV – Downtown & Waterfront Master Plan*” (“PlanBTV”), which contemplates the redevelopment of the Larger BTC Property in a manner that would utilize the Larger BTC Property more intensively in order to infill downtown development and provide more active street-level uses, would include a mix of affordable and market rate downtown housing, retail and services, and would also restore and/or improve connectivity to the urban grid along Pine Street and St. Paul Street.
- E. The Parties entered into a Development Agreement dated as of October 26, 2017, as amended by Letter Agreement dated August 27, 2018 and fully executed on September 7, 2018 (as amended, the “Original Development Agreement”) with respect to the redevelopment of the BTC Property and the City Property with a certain mixed-use project described and defined therein, which was approved by the Burlington Development Review Board (“DRB”) by

findings of fact and decision for File No. ZP17-0662CA/MA dated March 17, 2017, as modified by Judgment Order dated July 17, 2017 executed by the State of Vermont Superior Court, Environmental Division, in the matter captioned *Devonwood Investors, LLC 75 Cherry Street*, Docket No. 39-4-17 Vtec. Such DRB approval, as so modified by such order, is referred to herein as the “Original Approval”, and the project approved by the Original Approval is referred to in this Agreement as the “Original Project”.

- F. Owner demolished certain portions of the former Burlington Town Center in 2018 and has not performed any construction activity on the BTC Property or the City Property since that time.
- G. Owner is now seeking approval to modify the redevelopment plans for the BTC Property and the City Property from the Original Project.
- H. The “Revised Project”, as such term is used herein, contemplates the development of the BTC Property and the City Property with one or more buildings collectively measuring $\pm 703,000$ sq. ft. and being no higher than 10 stories, including the following features and characteristics (all numbers are approximations and may change due to final architectural and engineering requirements):
- ± 427 residential housing units and residential amenities, including a mix of unit sizes and including both market rate and affordable (i.e., inclusionary) housing units and rental and owner-occupied units.
 - $\pm 45,000$ sq. ft. of first class retail space, designed to attract a mix of local, regional and national retailers, service providers, and restaurants.
 - $\pm 3,000$ sq. ft. community space (the “Community Space”).
 - A ± 425 space parking garage including above and below-grade parking spaces, including the provision of covered long term bicycle parking facilities.
 - Uncovered short term bicycle parking facilities.
 - The re-establishment of St. Paul Street over the Parcel 3 right of way as a 60 foot-wide through, public street running between Bank Street and Cherry Street.
 - The re-establishment of Pine Street over the Parcel 1 right of way as a 60 foot wide through, public street running between Bank Street and Cherry Street.
 - A rooftop observation deck to be made available to the public, subject to the Owner’s reasonable rules and regulations and periodic, short-term closures for private rentals and events.
- I. As of the Effective Date, the Revised Project remains subject to review and approval by the DRB. The Revised Project may be revised through the regulatory processes consistent with

and subject to the provisions of this Agreement, and as ultimately may be approved by the DRB (the “Future DRB Approval”). The Revised Project includes the Private Improvements, the Public Improvements, and any Additional Public Improvements, all as subject to the terms of this Agreement.

- J. To facilitate Owner’s development of the BTC Property and the City Property with the Revised Project, the Parties now desire to amend and restate the Original Development Agreement in its entirety.

Index of Definitions

“100 Bank Easement” has the meaning set forth in Section 4(g)(i).

“Actual TIF Borrowing Costs” has the meaning set forth in Section 4(c)(ii)(D).

“Additional Public Improvements” has the meaning set forth in Section 2(h)(i).

“Advanced Preliminary Budget” has the meaning set forth in Section 3(h)(ii)(B).

“Agreement” has the meaning set forth in the Preamble.

“Applicable Laws” has the meaning set forth in Section 1(b).

“Available TIF Amount” has the meaning set forth in Section 4(c)(i).

“BBA” has the meaning set forth in Section 4(g)(iii).

“BPD” has the meaning set forth in Section 4(g)(iii).

“BTC Property” has the meaning set forth in Recital A.

“business day” has the meaning set forth in Section 13.

“CEDO” has the meaning set forth in Section 2(f).

“City” has the meaning set forth in the Preamble.

“City Property” has the meaning set forth in Recital B.

“Commence Construction of the Revised Project”, and variants thereof, has the meaning set forth in Section 1(a)(i).

“Community Space” has the meaning set forth in Recital H.

“Completion” has the meaning set forth in Section 1(a)(iii).

“Continuous and Ongoing Construction”, and variants thereof, has the meaning set forth in Section 1(a)(ii).

“DPW” has the meaning set forth in Section 4(g)(iii).

“DRB” has the meaning set forth in Recital E.

“Effective Date” has the meaning set forth in the Preamble.

“Eligible Macy’s Easement Costs” has the meaning set forth in Section 3(h)(ii)(J)(c).

“Estimated TIF Funding Amount” has the meaning set forth in Section 4(c)(i).

“Event of Force Majeure” has the meaning set forth in Section 7.

“Expected TIF Borrowing Costs” has the meaning set forth in Section 4(c)(ii)(D).

“Final Budget” has the meaning set forth in Section 3(h)(ii)(B).

“Final Design and Specifications Sheet” has the meaning set forth in Section 3(h)(ii)(A).

“Final Public Improvement Plans” has the meaning set forth in Section 3(b).

“Future DRB Approval” has the meaning set forth in Recital I.

“GMT” has the meaning set forth in Section 2(g).

“Inclusionary Units” has the meaning set forth in Section 2(b).

“Larger BTC Property” has the meaning set forth in Recital A.

“Macy’s Easement” has the meaning set forth in Section 3(h)(ii)(J)(c).

“Major Change” has the meaning set forth in Section 2(i).

“Modified Public Improvements” has the meaning set forth in Section 4(g)(i).

“MPI Contract” has the meaning set forth in Section 1(m).

“Northeast Tower” has the meaning set forth in Section 1(e).

“Northwest Tower” has the meaning set forth in Section 1(e).

“Not to Exceed TIF Funding Amount” has the meaning set forth in Section 4(b).

“Original Approval” has the meaning set forth in Recital E.

“Original Development Agreement” has the meaning set forth in Recital E.

“Original Project” has the meaning set forth in Recital E.

“Outside Commencement Deadline” has the meaning set forth in Section 1(k).

“Owner” has the meaning set forth in the Preamble.

“Parcel 1” has the meaning set forth in Recital B.

“Parcel 3” has the meaning set forth in Recital B.

“Party” or “Parties” has the meaning set forth in the Preamble.

“Phase” or “Phases” has the meaning set forth in Section 1(e).

“Plan” has the meaning set forth in Recital A.

“PlanBTV” has the meaning set forth in Recital D.

“Priority Blocks” has the meaning set forth in Section 2(h)(iii).

“Private Improvements” has the meaning set forth in Section 1(e).

“Public Improvements” has the meaning set forth in Section 1(d).

“Restart Extension Event” has the meaning set forth in Section 1(k).

“Revised Project” has the meaning set forth in Recital H.

“Revised Project Construction Commencement Deadline” has the meaning set forth in Section 1(k).

“Revised Project Schedule” has the meaning set forth in Section 1(c).

“South Tower” has the meaning set forth in Section 1(e).

“Targeted Job Applicants” has the meaning set forth in Section 5(b)(i).

“Temporary Construction Easement” has the meaning set forth in Section 1(m).

“TIF Borrowing Costs” has the meaning set forth in Section 4(c)(ii)(D).

“TIF Construction Contract” has the meaning set forth in Section 4(a).

“TIF Eligible Costs” has the meaning set forth in Section 3(h)(ii)(B).

“TIF Waterfall” has the meaning set forth in Section 3(h)(ii)(J).

“Waterfront TIF District” has the meaning set forth in Section 4(a).

“Work” has the meaning set forth in Section 3(h).

NOW THEREFORE, in consideration of the covenants, considerations and mutual benefits set forth herein, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the City and Owner agree as follows:

1. Revised Project Schedule; Construction of Revised Project.

a. As used in this Agreement, the following terms shall have the meanings that follow them:

- i. “Commence Construction of the Revised Project”, and variants thereof, including as the term may be applicable to one or more Phase(s) of the Revised Project, means that Owner, or another person under a binding written contract that is entered into prior to the work taking place, commences vertical construction of the substructure of the Private Improvements comprising activities such as excavation for and installation of all under slab utilities and drainage; excavation, forming and placement of concrete footings; forming and placement of concrete foundation walls; and associated insulation and water proofing. As used herein Commencement of Construction of the Revised Project shall not be deemed to have occurred by the conduct of preliminary activities such as planning or designing, securing financing, exploring, researching, obtaining permits, licensing, conducting surveys, environmental and engineering studies, clearing a site, test drilling to determine soil condition, excavation to change the contour of the land (as distinguished from excavation for footings and foundations), or the construction of roads, fencing, and buildings that are not an integral part of the Public Improvements or the Private Improvements but are to be used primarily in support of construction of the Public Improvements or Private Improvements.
- ii. “Continuous and Ongoing Construction”, and variants thereof, including as the term may be applicable to one or more Phase(s) of the Revised Project, means that work qualifying as Commenced Construction of the Revised Project shall, once commenced, proceed without material interruption to Completion excepting only delays in performance resulting from an Event of Force Majeure. Customary pauses in construction activities on account of non-working hours, weekends, holidays and transitions between construction activities shall not be deemed a “material interruption” as such term is used in the previous sentence.
- iii. With respect to construction of the Revised Project, the term “Completion”, and variants thereof, means that a Unified Certificate of Occupancy (or its functional equivalent at the applicable time) has been issued by the City for the respective Phase(s) of the Revised Project.

b. The Owner has submitted an application for zoning approval for the Revised Project to the DRB. The City agrees to cooperate in good faith with Owner to facilitate the timely development of the Revised Project in accordance with this Agreement, the Future DRB Approval, and all applicable laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, zoning requirements, permits, licenses, authorizations, and requirements of all

governments, departments, commissions, boards, courts, authorities and agencies of competent jurisdiction acting within the scope of their authority which now or at any time hereafter may be applicable to the Revised Project (collectively “Applicable Laws”). The City agrees to cooperate in good faith with Owner to join in any application to the State of Vermont for a public water supply infrastructure permit if the City’s involvement is required by the State of Vermont, and to join in any other permit application to the State of Vermont if the City’s involvement is required by the State of Vermont for such permit. Except for the Public Improvements and the Additional Public Improvements, Owner agrees that it shall have no right to make any improvements to be made on the City Property without the City’s prior written consent.

c. Owner anticipates constructing the Revised Project (including the Public Improvements and any Additional Public Improvements) in accordance with the project schedule set forth on **Exhibit B-1** to this Agreement (the “Revised Project Schedule”), which Revised Project Schedule is incorporated herein by reference. Each Party agrees to use best efforts to cause the Revised Project to adhere to the Revised Project Schedule, with the understanding that each Party’s ability to timely perform under this Agreement may be contingent on the other Party’s timely performance and Events of Force Majeure.

d. Subject to the terms and conditions of this Agreement, Owner shall construct (i) certain public improvements consisting of the re-establishment of St. Paul Street as a 60-foot-wide through, public street running between Bank Street and Cherry Street and the re-establishment of Pine Street as a 60-foot wide through, public street running between Bank Street and Cherry Street, all as further described in this Agreement (the “Public Improvements”), and (ii) any Additional Public Improvements. The Public Improvements shall be constructed on the City Property. The Public Improvements constructed on the Parcel 1 right of way will re-establish the segment of Pine Street running between Bank Street and Cherry Street. The Public Improvements constructed on the Parcel 3 right of way will re-establish the segment of St. Paul Street running between Bank Street and Cherry Street.

e. The “Private Improvements”, as such term is used herein, consist of the Revised Project other than the Public Improvements and any Additional Public Improvements. Owner may construct the Private Improvements in three phases (each, a “Phase”, together, the “Phases”), which Phases are depicted on **Exhibit B-2**. One Phase will consist of construction of the northwest tower of the Revised Project and associated parking (collectively, the “Northwest Tower”). Another Phase will consist of construction of the northeast tower of the Revised Project and associated parking (collectively, the “Northeast Tower”). Another Phase will consist of construction of the southern tower and associated parking (collectively, the “South Tower”).

f. Owner may, in its discretion, subject to the Future DRB Approval and Applicable Laws, construct multiple Phases sequentially or concurrently, and construction of multiple Phases (or portions thereof) may or may not overlap. The Owner anticipates that either the Northwest Tower or the Northeast Tower will be constructed first, with the other to follow, and with construction potentially occurring on the two Phases concurrently. Owner anticipates that construction of the South Tower will follow that, with construction potentially occurring concurrently with the construction of one or both of the earlier Phases.

g. As reflected in the Revised Project Schedule, the Owner's anticipated outside date for Completion of the first of the Northwest Tower and the Northeast Tower is July 1, 2024, the Owner's anticipated outside date for Completion of the second of the Northwest Tower and the Northeast Tower is July 1, 2025, and the Owner's anticipated outside date for Completion of the South Tower is July 1, 2025.

h. The Public Improvements shall be completed and delivered to the City with the corresponding Phases of construction of the Private Improvements as follows:

- i. The Public Improvements located on the Parcel 1 right of way shall be completed and delivered to the City upon Completion of the Northwest Tower, but in no event later than July 1, 2024 if the Northwest Tower is the first of the Phases and no later than July 1, 2025 if the Northwest Tower is a later Phase, except with respect to an Event of Force Majeure.
- ii. The Public Improvements located on the Parcel 3 right of way shall be completed and delivered to the City upon Completion of the Northeast Tower, but in no event later than July 1, 2024 if the Northeast Tower is the first of the Phases and no later than July 1, 2025 if the Northeast Tower is a later Phase, except with respect to an Event of Force Majeure.
- iii. Notwithstanding the foregoing, delivery of the sidewalk portion of the Public Improvements along the St. Paul Street frontage of the South Tower may be delayed until delivery of the South Tower, but in no event later than July 1, 2025 except with respect to an Event of Force Majeure. Further, in the event that the Owner does not Commence Construction of the South Tower prior to September 30, 2023 or construction of the South Tower, once commenced, does not proceed on a Continuous and Ongoing basis, Owner shall promptly commence and diligently prosecute completion of the sidewalk portion of the Public Improvements along the St. Paul Street frontage of the South Tower.

i. The Owner shall, at the time of conveying any Public Improvements or Additional Public Improvements to the City, also convey to the City, and the City shall acquire from Owner, all applicable warranties from Owner's contractors, subcontractors and material suppliers relating to the Public Improvements and Additional Public Improvements being conveyed. Prior to the City's acceptance of the Public Improvements and any Additional Public Improvements, Owner shall comply with the requirements of the Future DRB Approval and any permits issued for the Revised Project by the City's Department of Public Works, and the Parties will execute a memorandum of understanding in the form attached as **Exhibit F**, which will specify their respective obligations with regard to any stormwater infrastructure situated within those municipal rights of way; without limitation, the memorandum of understanding will state that the City will not be obligated to pay for any capital repairs to the filtration systems and holding tanks that are part of the stormwater infrastructure, and the City will not be obligated to maintain or inspect the filtration systems or holding tanks, but the City will agree to maintain, inspect and repair street improvements where they drain into the filtration systems and holding tanks. Upon notice that public storm water from City property is entering Owner's private stormwater filtration system, the City shall take reasonable steps

to prevent such stormwater runoff into Owner's stormwater filtration system in accordance with Applicable Laws, or to come to agreement with Owner on a reasonable approach to share the maintenance costs of Owner's stormwater filtration system on a pro rata basis.

j. Owner agrees that prior to Commencing Construction of the Revised Project, Owner shall provide the City with a copy of the TIF Construction Contract for the Revised Project (or the applicable Phase(s) of Private Improvements included therein, if less than all) which (i) contains a guaranteed maximum price to construct the full scope of the Public Improvements and any Additional Public Improvements consistent with the Final Budget, (ii) is secured by payment and performance bonds for the benefit of the construction lender, a completion guaranty for the benefit of the construction lender or another customary and commercially reasonable form of financial surety reasonably satisfactory to the City, and (iii) includes an allowance for (a) the Public Improvements and (b) any Additional Public Improvements the City has proposed, that is consistent with the Final Budget. Owner further agrees that at least 30 days prior to the commencement of construction of the Public Improvements and any Additional Public Improvements, Owner shall provide the City with a commercially reasonable performance guaranty (if the Additional Public Improvements are built in phases each separate phase will require its own performance guaranty) for the benefit of the City, to the City's reasonable satisfaction. The Parties agree that Owner's satisfaction of any condition of the Future DRB Approval that provides for a guarantee consistent with Condition 11 of the Original Approval will fulfill Owner's performance guaranty requirements for the Public Improvements and any Additional Public Improvements set forth in the previous sentence.

k. Notwithstanding anything to the contrary in this Agreement, Owner shall Commence Construction of the Revised Project on or prior to September 30, 2022 (the "Revised Project Construction Commencement Deadline"), provided, however, that the Revised Project Construction Commencement Deadline will be extended one day for each day during which any of the following events occurs and is ongoing (each, a "Restart Extension Event"): (i) the zoning permit for the Revised Project is approved later than February 28, 2021; (ii) the zoning permit for the Revised Project is appealed; (iii) Owner's pending litigation with 100 Bank, LLC is not resolved by June 30, 2021; or (iv) an Event of Force Majeure. Notwithstanding the foregoing, and notwithstanding the actual duration of any Restart Extension Event (including the duration of an Event of Force Majeure), in no event will the Revised Project Construction Commencement Deadline be extended beyond the earlier to occur of (i) the date that is fifteen (15) months following the resolution of the Restart Extension event, or (ii) June 30, 2023 (such earlier date, the "Outside Commencement Deadline").

l. Notwithstanding anything to the contrary in this Agreement, the Owner agrees that once Owner has Commenced Construction of the Revised Project, Owner shall diligently prosecute Continuous and Ongoing Construction to Completion.

m. If Owner (i) fails to Commence Construction of the Revised Project on or prior to the Revised Project Construction Commencement Deadline, or (ii) fails to maintain Continuous and Ongoing Construction of the Revised Project from and after having timely met its obligation to Commence Construction until Completion, and/or (iii) fails to timely complete and deliver the Public Improvements pursuant to Section 1(h), the City may elect the following in response: (A) to issue a notice to proceed under that certain construction contract attached hereto as **Exhibit C** (the "MPI Contract"), and/or (B) to terminate that certain Temporary Construction Easement by and between

the City and Owner with respect to the City Property dated as of the Effective Date (the “Temporary Construction Easement”) and to be recorded in the City of Burlington Land Records. Furthermore, if any of the events described clauses (ii) or (iii) above arise and, at such time, construction of the Public Improvements has proceeded beyond the scope of the work that is subject to the MPI Contract, then, in addition to the City’s rights set forth in clauses (A) and (B) above, the City may also seek other remedies as may be available at law or in equity to compel the completion of the full scope of the Public Improvements and/or to reimburse the City for its cost to complete the same. The City’s rights in response to the failure of the Owner to meet one or more of the conditions set forth in clauses (i), (ii), and/or (iii) above shall be in addition to the City’s rights under Section 4 of this Agreement. Except as provided herein, the City shall have no other remedies at law in response to the failure of the Owner to meet one or more of the conditions set forth in clauses (i), (ii), and/or (iii) above. Notwithstanding anything herein or in the MPI Contract to the contrary, Owner may delay delivery of the above-grade portions of the work that is subject to the MPI Contract to be constructed from the back of the curb into the site for a six (6) month period commencing on the Revised Project Construction Commencement Deadline if, within that six (6) month period, Owner has Commenced Construction of the Revised Project, in which event Owner shall deliver such above-grade improvements from the back of the curb into the site consistent with the scope and other requirements of the Public Improvements hereunder. If Owner has not Commenced Construction of the Revised Project within such six-month period, then Owner shall deliver all above-grade work that is the subject of the MPI Contract no later than the date that is six (6) months after the Revised Project Construction Commencement Deadline.

2. Certain Revised Project Features; Additional Public Improvements.

- a. Sustainability. In addition to incorporating the Public Improvements, any Additional Public Improvements, and the Private Improvements, Owner agrees that: (i) the final plans and design for the Revised Project will accommodate and support alternative forms of transportation, including the use of bicycles, car-sharing, mass transit and other measures as may be approved in the Future DRB Approval; (ii) the final plans and design for the Revised Project will include the installation of rooftop solar photovoltaic electric generation infrastructure as may be approved in the Future DRB Approval, subject to Owner’s receipt of regulatory approval from the Vermont Public Utility Commission and to Owner’s entry into a reasonably acceptable interconnection agreement with Burlington Electric Department; (iii) the Revised Project will be built consistent with the requirements of ZA-16-14, Section 4.5.8(c)(6)(A), and will strive to achieve the energy reduction goals outlined in the “Architecture 2030 Challenge,” to the extent applicable to new construction, and shall provide the City, upon written request from the City, with periodic updates regarding such efforts; (iv) Owner will work with Burlington City Arts on final plans and designs for public art installations in public spaces in the Revised Project, and the final plans and design for the Revised Project will incorporate City-approved public art installations that are reasonably satisfactory to the Owner and at no additional cost to Owner; and (v) the final plans and design for the Revised Project will incorporate accessibility features in accordance with applicable law, and will also use reasonable efforts to incorporate so-called “universal” design standards which, if implemented, would facilitate all-ages accessibility to the Revised Project

and which are consistent with the Future DRB Approval.

Further, Owner acknowledges that it is the Owner's intention that the Revised Project will be designed to minimize the use of fossil fuels to the greatest extent practicable and Owner intends to incorporate into the Revised Project a renewable primary heating system sized to meet at least 85 percent of the Revised Project's heating load. To that end, Owner shall utilize good faith reasonable efforts, including providing funding for detailed engineering design, for such system to be fueled by either (i) electricity (which may include ductless heat pumps, geothermal heat pumps, Variable Refrigerant Heat Pumps, Air to Water Heat Pumps), or (ii) efficient central wood pellet or woodchip boiler or furnace. Notwithstanding the foregoing, if despite Owner's good faith efforts, Owner reasonably determines that such system cannot be fueled in either manner described in clauses (i) or (ii) above because doing so would add material cost to the Revised Project, be technically incompatible with the Revised Project, or cause delay to the Revised Project then, after providing a letter to the City substantiating Owner's determination, Owner may instead utilize a conventional heating system that satisfies efficiency standards and Applicable Laws in effect and applicable to the Revised Project.

b. Housing. Subject to the terms of the Future DRB Approval, the Revised Project will include 424 residential housing units; however, the final unit count is subject to the Future DRB Approval, including regarding final construction drawings and as-built design, which may alter the unit count number. Owner intends to provide a mix of housing unit sizes, designs, and costs meant to attract a mix of tenants as contemplated in PlanBTV. Twenty percent (20%) of the total units in the Revised Project (rounding up to the nearest whole unit), shall be inclusionary units in conformity with the City's Inclusionary Zoning Ordinance ("Inclusionary Units"), comprised of the same mix of unit sizes as the market-rate units. Owner agrees that to the extent that Revised Project amenities are made available to the residential units, they shall be equally available to both the market-rate and affordable units on the same terms and conditions. Owner intends to provide housing primarily as rental units but may offer some units for sale. Owner agrees to provide the City with an opportunity to review and comment on the unit design mix and the unit size mix for the residential component of the Revised Project, as well as the unit location for the inclusionary housing units and the mix of rental and any ownership units, for conformity with the goals of PlanBTV, provided that Owner shall have complete discretion and shall retain final control over such issues. Nothing contained herein limits the availability of housing units in the Revised Project for occupancy by individuals, including, without limitation, those who may be pursuing full or part time higher education, seniors or work force members.

c. Workforce Housing. In addition to the affordable, or inclusionary, housing to be included as a component of the Revised Project, Owner shall endeavor to develop some "workforce housing" as part of the residential component of the Revised Project, "workforce housing" being that which targets households with incomes between 80% to 120% of the median income for the Burlington/South Burlington MSA, adjusted for household size, and it being understood that these voluntary efforts on the part of the Owner shall create no new legal obligation to create or maintain such housing.

d. Low Income Housing Tax Credits. The City agrees to use its diligent, reasonable and good faith efforts to support Owner's efforts to apply for and obtain finance subsidies and Low Income Housing Tax Credits that are normally available from either the State of Vermont or the U.S. government to qualified Vermont development projects that include Affordable Housing and/or Work Force Housing, such as that which the Revised Project intends to offer.

e. Burlington Telecom. Owner agrees to afford Burlington Telecom the same opportunity to bid on the installation and provision of services to the Revised Project as Owner affords to other providers of the services offered by Burlington Telecom. Owner agrees to use reasonable efforts to utilize Burlington Telecom residential and commercial services if such services are available to the Revised Project on the time-line described herein and such services are available on terms and conditions that are competitive with other similar services on a commercial and residential basis and otherwise are satisfactory to the Owner.

f. Community Space and Rooftop Observation Space. Owner agrees to include the development of the Community Space as part of the Revised Project. The Community Space shall be available for use by community and/or civic groups during normal business hours and pursuant to rules and regulations adopted by the Owner. The Parties agree that the Community Space may be located within an indoor portion of the rooftop observation deck. Otherwise, the Owner shall locate the Community Space elsewhere on the Owner's Property, as determined by the Owner in the Owner's sole discretion. Owner will work with the City to determine how the Community Space will be designed and programmed. The City, acting through its Community and Economic Development Office ("CEDO"), will work with Owner to develop programs and uses for the Community Space that will optimize its use for the benefit of the residents of Burlington. The rooftop observation deck shall be generally open to the public daily during normal business hours except for those times when it has been used or rented for private events, shall be made available for use by non-profit and educational organizations at discounted rates, and shall include gender-neutral restrooms for use by the public during those times when it is open to the public. The use of the rooftop observation deck shall at all times be subject to the Owner's rules and regulations, including those relating to fees and charges for its rental.

g. Parking and Transportation. Owner will work with Chittenden Area Transportation Management Association (CATMA) and Green Mountain Transit ("GMT") to optimize the interplay between the transportation services that such organizations offer and the parking component of the Revised Project. Owner shall install and implement parking garage safety measures including pervasive and adequate lighting subject to and consistent with Condition 2(c) of the Original Approval, as it may be amended, modified, replaced or superseded in the Future DRB Approval, and a comprehensive security camera system that includes cameras at entry and exit points (including elevators) and in stairwells. Owner shall also install signage that reminds people not to leave valuables in vehicles. Parking garage stairways and elevators shall be well-lit.

h. Additional Public Improvements.

i. In addition to the Public Improvements, the Revised Project may include the "activation" of segments of Bank Street between Church Street and Pine Street, and of Cherry Street between Church Street and Battery Street (in

each case including the north and south sides of the street) (collectively, the “Additional Public Improvements”). As used herein, “activation” of street segments means to include a high level of street design including sidewalks within the public right of way (which may be wider than those currently in place), street trees, pavers, street lighting, storm water features, sub-surface utilities and infrastructure. To achieve a consistent and holistic design, the City will be responsible for designing all Additional Public Improvements as more particularly described in this Agreement.

- ii. The City shall have the right and option to either construct some or all of the Additional Public Improvements itself using funds available within the Available TIF Amount or using other funding sources, in its discretion, or to require Owner to construct some or all of the Additional Public Improvements as a component of the Revised Project, provided, however, that Owner will not be required to construct Additional Public Improvements to the extent that the cost of construction would not be reimbursable to Owner as a TIF Eligible Cost under this Agreement. To further clarify the Parties’ intent, the City only has the right and option (not the obligation) to require Owner to construct some or all of the Additional Public Improvements as a component of the Revised Project and only to the extent there are sufficient funds available within the Available TIF Amount and subject to the TIF Waterfall and otherwise as described in this Agreement.
- iii. The City shall have the right and option to either construct Additional Public Improvements or to include Additional Public Improvements in the Revised Project in such order of priority as the City may determine, provided, however, that the addition of those portions of the blocks of Bank Street and Cherry Street that are immediately adjacent to the Property (the “Priority Blocks”) shall have first priority for addition to the Project, and their design shall be mutually satisfactory to the Parties.
- iv. In no event shall the addition of an Additional Public Improvement as a component of the Revised Project delay Owner’s progress under the Revised Project Schedule. Owner shall obtain and deliver to the City so-called Add Alternative pricing for each of the Additional Public Improvement elements, meaning (1) Bank Street between St. Paul Street and Pine Street, (2) Cherry Street between St. Paul Street and Pine Street, (3) Bank Street between St. Paul Street and Church Street; (4) Cherry Street between St. Paul Street and Church Street; and (5) Cherry Street between Pine Street and Battery Street.

i. Major Changes. A change to the Revised Project that would conflict with or be inconsistent with the provisions of this Agreement or Owner’s obligations hereunder shall be considered a “Major Change.” Owner shall not make a Major Change to the Revised Project, either before or after approval of the Future DRB Approval, without the prior consent of the City in its sole discretion. Notwithstanding the foregoing, the City shall not unreasonably withhold or delay its consent to a Major Change to the extent that the Major Change is required by the DRB. Owner shall retain the right in its sole discretion to make changes to the Revised Project that are not Major Changes.

3. Public Improvements and Additional Public Improvements.

a. Owner shall, subject to and in accordance with the application of the reimbursement provisions described in Section 4 of this Agreement, construct the Public Improvements and any Additional Public Improvements as a component of the Revised Project, consistent with the Revised Project Schedule. The Parties anticipate that the Future DRB Approval shall include approval for the construction of the new segments of Pine Street and St. Paul Street and for “activating” those sections of Bank Street and Cherry Street that adjoin the Property.

b. Owner has completed 100% design plans and specifications for the Public Improvements, a schedule of which is attached hereto as **Exhibit A** (the “Final Public Improvement Plans”). Subject to the terms of this Agreement, the Parties agree that they may need to modify the Final Public Improvement Plans as the Parties refine the Advanced Preliminary Budget applicable to the Public Improvements. Owner shall in good faith consider and, where appropriate, incorporate the City’s feedback to the Final Public Improvement Plans, provided that if Owner disagrees with the City’s feedback on the Final Public Improvement plans, Owner shall notify the City in writing within 7 days of receipt of the City’s feedback, whereupon the City shall have 7 days to provide further feedback to the Owner, and whereafter such 7-day review and comment periods shall continue until the Parties have resolved outstanding concerns or one of the Parties has declared an impasse. Failure of either Party to timely respond to the other as provided in this Section 3(b) shall be considered the deemed approval of the Party who has failed to respond.

c. Owner will bid work pursuant to the Final Public Improvement Plans in accordance with the requirements of this Agreement. The City will review the bids against the Advanced Preliminary Budget. The City may value engineer the work to the reasonable satisfaction of the City and Owner.

d. If the City elects to proceed with Additional Public Improvements, the City will (i) deliver to Owner reasonably detailed plans for financing the cost of the Additional Improvements, and (ii) proceed to complete the designs for the Additional Public Improvements, inclusive of the intersections, and shall design grading and materials in the intersections based upon the finished grading and materials specified in the agreed-upon plans and specifications for the new segments of Pine Street and St. Paul Street to be furnished by Owner to the City. The City shall cause its design consultants to coordinate grading and materials at entry points to the Revised Project and to 67 Cherry Street using information provided by Owner to the City. Within 180 days of the Effective Date, the City will provide Owner with 100% design plans and specifications for the Additional Public Improvements, if any, for its review, together with an updated engineer’s estimate of the cost of the work. 100% design plans will be stamped by the engineer who prepared the plans and will be suitable for bidding the work. Owner will provide the City with feedback regarding the 100% plans within 14 days of receipt. City shall in good faith consider and, where appropriate, incorporate the Owner’s feedback to 100% design plans, provided that if City disagrees with the Owner’s feedback on the 100% design plans, City shall notify the Owner in writing within 7 days of receipt of the Owner’s feedback, whereupon the Owner shall have 7 days to provide further feedback to the City, and whereafter such 7-day review and comment periods shall continue until the Parties have resolved outstanding concerns or one of the Parties has declared an impasse. Failure of either Party to timely respond to the other as provided in this Section 3(d) shall be considered the deemed approval of the

Party who has failed to respond. Owner shall not be required to dedicate material resources or attention to the Additional Public Improvements hereunder unless and until the City has delivered to Owner reasonably detailed plans for financing the entire cost of the Additional Improvements as provided in clause (i) above in this Section 3(d).

e. The scope of Public Improvements and any Additional Public Improvements will include alternatives, as directed by the City, and at the City's cost (which may be reimbursable to the City the extent there are funds available under the TIF Waterfall), for offsite improvements required in connection with the City's payment to acquire necessary rights from the owners of 100 Bank Street, 150 Bank Street and 77 Pine Street. The Parties agree that the new street segments shall feature a high level of street design including: wider sidewalks (where such wider sidewalks can be accommodated); street trees; pavers; street lighting; storm water features, sub-surface utilities and infrastructure; high quality benches, trash cans and other similar items of municipal property commonly found within sidewalks, all in substantial compliance with the City's "Great Streets" standards.¹

f. Once the 100% design plans for the Additional Public Improvements, if any, are approved by the City, Owner will bid that work in accordance with the requirements of this Agreement. The Parties agree that in order to ensure that there are sufficient funds to pay for work relating to the Priority Blocks inclusive of intersections, at the City's election either (i) such work shall be bid separately from and prior to the other blocks, or (ii) when such work is bid, all other work on Bank Street and Cherry Street included in the bid package shall be bid on an Add Alternate basis. The City will review the bids against the updated engineer's estimate and budget, such estimate and budget shall be pre-approved by the City and Owner. If the bids indicate that the cost of the work as described in the approved 100% design plans will exceed the Advanced Preliminary Budget, the City may value engineer the work provided that the design of the Priority Blocks is subject to the parties' mutual approval as stated above.

g. Owner shall construct the Public Improvements and any Additional Public Improvements that the City adds as a component of the Revised Project in the manner set forth above, consistent with the Revised Project Schedule. Owner shall not be required to pay for any zoning permits, building permits or encumbrance permits to perform the work associated with "activating" any additional sections of Bank Street and Cherry Street (i.e., any Additional Public Improvements); however, Owner will be required to obtain encumbrance and/or excavation permits prior to performing any such work so that work within the public right-of-way will be properly regulated. In connection with the construction of any Additional Public Improvements, Owner shall not be charged any fee or be required to provide any insurance beyond what is required by this Agreement and if any such fees are required, then the City shall promptly reimburse the Owner for any fee paid by the Owner.

h. Construction of Public Improvements and Additional Public Improvements. The following provisions shall apply to the design, development and construction of the Public

¹ For clarity, references in this Agreement to the "Great Streets" standards are meant to refer to that 302 page report entitled "Great Streets BTV, City of Burlington, Downtown Street Design & Construction Standards" last revised July 10, 2017, prepared as a joint project of the Community & Economic Development Office and the Department of Public Works, together with the 231 page Appendix.

Improvements and any Additional Public Improvements that become part of the Revised Project; for purposes of this Section 3(h), the design, development and construction of Public Improvements and any Additional Public Improvements that become part of the Revised Project are referred to as the “Work”:

- i. Design. Design of the Work is addressed in Sections 3(a) – 3(g) above. For clarity, City staff, employed by the executive branch of municipal government including by CEDO and DPW, shall be authorized to review and approve the design plans and specifications, construction plans, bid packages and budget contemplated by this Agreement.
- ii. Bidding and Budget.
 - A. Before putting bid packages together for any hard construction costs, City and Owner shall have agreed upon the plans and specifications with respect to the Work, and they will memorialize their agreement as to the final design and specifications by signing a final design and specification sheet in a form attached hereto as Exhibit J (the “Final Design and Specifications Sheet”). No material deviations from the approved plans and specifications may be made without the written prior approval of the City. Owner shall notify the City in writing of any and all proposed changes in the plans and specifications, and such changes must have the prior written approval of the City before they may be implemented, provided that the City shall act in a timely and reasonable manner with respect to any such changes proposed by the Owner.
 - B. An advanced preliminary budget with respect to the Work is attached as Exhibit D hereto (the “Advanced Preliminary Budget”). The Advanced Preliminary Budget does not exceed the Estimated TIF Funding Amount. The Advanced Preliminary Budget identifies anticipated TIF Eligible Costs and the anticipated allocation and distribution of TIF Eligible Costs according to the TIF Waterfall. The Advanced Preliminary Budget includes both (i) those TIF Eligible Costs that Owner has incurred or anticipates incurring after September 5, 2020, and (ii) those TIF Eligible Costs that Owner had incurred as of September 5, 2020. The Advanced Preliminary Budget will be modified as agreed by the Parties, by amendment in writing, if and as plans and specifications for the Work are advanced, completed and agreed upon as provided in Sections 3(a) – 3(g) above (as ultimately agreed in writing, the “Final Budget”). The Final Budget shall not exceed the Available TIF Amount and will include all costs for which Owner will be reimbursed by the City pursuant to the TIF Waterfall, subject and pursuant to Section 4 of this Agreement, including all agreed-upon: design costs; predevelopment costs and expenses; financing expenses; demolition costs; hard construction costs; soft

construction costs; construction management fees and costs; insurance expenses; permitting costs; legal fees; environmental remediation costs; costs to equip the Public Improvements and Additional Public Improvements; costs of commissioning and installing public art within municipal rights-of-way; costs of acquiring property rights of third parties who own adjacent properties or properties contiguous with the rights-of-way where the Public Improvements will be constructed; other associated and related costs described in Question 4 of the November 8, 2016 municipal ballot; and the City's associated and related costs (collectively, the "TIF Eligible Costs"); subject to the understanding that the City will only reimburse costs and expenses in accordance with Applicable Laws and Section 4 of this Agreement and that TIF Eligible Costs shall be subject to and allocated and distributed in accordance with the TIF Waterfall. The Parties recognize that as the Work may be designed and performed in Phases, the Parties may prepare and/or agree upon a Final Budget for specific Phase(s), before an Advanced Preliminary Budget and Final Budget covering all aggregate Work has been prepared/completed. Accordingly, although the Advanced Preliminary Budget and Final Budget contemplated by this Agreement refer to the overall budget for the Work, as appropriate given the context, the terms Advanced Preliminary Budget and Final Budget may be construed to refer to particular Phase(s) of the Work.

- C. The project contingency included in the Advanced Preliminary Budget and in the Final Budget shall not exceed 15% of the direct cost to construct the Work.
- D. In bidding the Work, Owner shall obtain at least three bids from unrelated contractors for each element of the Work (unless the City agrees otherwise), isolate those costs for which Owner intends to seek reimbursement from the City and require quantity and unit costs to facilitate the Parties' ability to determine whether such costs are properly reimbursable in accordance with this Agreement.
- E. Owner shall provide the City with all of the bids submitted from all contractors and subcontractors for the City's review and approval prior to accepting any particular bid. All bids selected will be mutually agreeable. If Owner desires to accept a bid that was not submitted by the lowest bidder, Owner shall provide the City with a written explanation for its preference.
- F. If Owner's general contractor intends to perform any Work using its own forces without bidding such Work, then the cost to perform Work using the general contractor's own forces must be within 5% of the amount stated in the Final Budget, as agreed upon by the Parties, to perform such Work.

- G. The City shall have the right to have a third party review any of the bids at its expense, provided that such review does not delay the Revised Project and the City shall not be entitled to reject any bid that is equal to or less than the amount reflected in the Advanced Preliminary Budget (as it may be modified from time to time by agreement of the Parties as contemplated by Section 3(h)(ii)(B)) for the work covered by such bid.
- H. The Parties will use the winning bids to develop and refine the Final Budget for the Work.
- I. The City reserves the right to modify the plans and specifications that describe the Work and adjust the scope of the Work in response to the bids so long as the City obtains any amendments of the Future DRB Approval necessitated by such modifications at its expense and such modifications do not delay the Revised Project timeline or otherwise increase the unreimbursed costs of the Revised Project to Owner.
- J. Funds available under the Available TIF Amount to reimburse TIF Eligible Costs, subject to Section 4 of this Agreement, shall be allocated and distributed according to the following waterfall (the “TIF Waterfall”):
 - a. First, to reimburse the City for the City’s TIF Eligible Costs up to a cap of \$500,000, plus the amount of the City’s payment to 100 Bank, LLC to acquire necessary rights to construct the Public Improvements on Parcel 1 and Parcel 3 and to use and enjoy Parcel 1 and Parcel 3 as public right of way.
 - b. Second, to reimburse Owner for Owner’s TIF Eligible Costs in connection with any completed and delivered Public Improvements incurred on or after September 5, 2020.
 - c. Third, to reimburse Owner for Owner’s Eligible Macy’s Easement Costs. As used herein, “Eligible Macy’s Easement Costs” means the lesser of (a) one-half the value of the Macy’s Easement as timely appraised by an independent third party appraiser paid for by Owner as approved by the City, or (b) \$1,250,000. As used herein, the “Macy’s Easement” means those easement rights set forth in the Construction, Operation and Reciprocal Easement Agreement dated December 29, 1999, recorded in Book 643, page 96 of the Burlington Land Records that encumber the BTC Property and the City Property. Owner shall have until June 30, 2021 to complete the

appraisal of the Macy's Easement, time being of the essence with respect thereto.

- d. Fourth, any remaining amount of the Available TIF Amount shall be allocated and distributed in a ratio of 60% to 40%, (i) with 60% of such amount allocated and distributed to pay for any Additional Public Improvements and/or the City's TIF Eligible Costs in excess of the \$500,000 cap, and (ii) with 40% of such amount allocated and distributed to reimburse Owner for any TIF Eligible Costs in connection with any completed and delivered Public Improvements incurred prior to September 5, 2020. The City shall have sole discretion to allocate amounts among the items set forth in clause (i) above, provided that in no event shall Owner be required to pay for any Additional Public Improvements as a result of the City's determination to allocate amounts for items in clause (i) above to TIF Eligible Costs other than the Additional Public Improvements.
- e. Distribution of all amounts pursuant to the TIF Waterfall will be subject to Section 4 of this Agreement and to the party who is seeking reimbursement providing appropriate and necessary backup documentation as required in this Agreement to substantiate the TIF Eligible Costs.

iii. Pre-Construction.

- A. Once the construction plans and specifications have been finalized for the Work, the City and its agents, Owner and Owner's general contractor and, where appropriate, relevant subcontractors shall attend a pre-construction meeting to review the construction plans and specifications for the Work and agree upon a detailed schedule for construction of the Work that is consistent with the requirements of this Agreement, to:
 - 1. specify what constitutes material versus non-material changes in the Work;
 - 2. specify the approval process that the City will require for material changes in the Work; and
 - 3. clarify the City's process for TIF administration including identifying which costs are TIF Eligible Costs, what back-up will be required prior to payment and what information must be provided in Owner's request for reimbursement.

iv. Construction.

- A. [Reserved]
 - B. No material deviations from the Final Design and Specifications Sheet may be made without the written prior approval of the City.
 - C. Owner shall notify the City in writing of any and all proposed changes in the plans and specifications for any Work and the City shall notify Owner within three (3) business days in writing as to whether any such proposed changes have been approved, not approved, or whether the City reasonably requires a specified number of additional days to review the proposed changes. Failure to provide such notice within three (3) business days, or within such specified number of additional days, shall be deemed to be approval by the City.
 - D. Owner may start construction of the Private Improvements before the Work or the approval of the final plans for the Work by the City, consistent with this Agreement. Similarly, as stated above the Work may be performed in Phases.
- v. Construction Meetings and Inspections.
- A. Weekly throughout the construction process Owner and Owner's general contractor shall invite the City and its agents to attend construction meetings to the extent that such meetings are concerned with or relate to the construction of the Work.
 - B. Weekly throughout the construction process, Owner and Owner's general contractor shall afford the City and its agents with full and complete access to the Work so that the City and its agents have the opportunity to effectively inspect the Work during business hours and before work is covered to determine whether the Work is being constructed in accordance with the approved plans and specifications.
 - C. The City's inspection representative(s) will be provided a heated workspace with access to data services in a job trailer or some other onsite location or a nearby offsite location, within one block of the project site, if Owner and the Owner's general contractor hold such meetings in such offsite location.
 - D. The Owner shall obtain the services of a Vermont licensed engineer, reasonably acceptable to the City, responsible to properly document and certify that the Work completed conforms with the bid documents and construction plans and specifications, as amended and approved by the Parties. The City agrees that Engineering Ventures is acceptable for these purposes.

- E. The City's inspection representative(s) will be provided daily field notes that relate to the Work from the contractor's engineer within 3 business days of receipt of such reports by Owner.
- F. Owner will provide submittals, requests for information (RFI) and correspondence regarding any Work to the City's inspection representative(s). Owner agrees the inspections, reports, advice, or recommendations provided to the City by its agents or inspectors is solely for the City's benefit and that Owner may not rely on the reports, advice, or recommendations made to the City by the City's agents or inspectors and that the City shall have no liability or duty to the Owner on account of the reports, advice, or recommendations produced by its agents or inspectors. Notwithstanding the foregoing, the City agrees to provide the Owner with a copy of each inspection report concerning the Work prepared by the City's agents or inspectors within 3 business days of receipt of such reports by the City.
- G. Owner shall provide the City and its agents with Owner's inspection reports and Owner's materials testing inspection reports relating to the Work prepared by engineers and other professionals who are licensed, certified or otherwise qualified to make such reports, which reports shall be addressed to the City (meaning that the City will be an addressee of such reports) and the City will be entitled to rely thereon.
- H. Without limitation, Owner's testing agency reports and construction materials testing reports shall include such sampling and testing as may be required by the VTrans Material Sampling and Testing Manual, including without limitation the obligation to certify proper placement and compaction, and to verify that structural soils meet specifications.
- I. Owner shall provide the City with contractor submittals, including any certifications required for the funding source, for review and approval within three (3) business days after receipt for any of the Work prior to the Work being initiated. Should materials be used before they are approved they will not be eligible for reimbursement if they are inconsistent with the approved construction plans and specifications for the Work.
- J. Owner shall direct its engineers and other licensed professionals to provide the City with all third party inspection reports related to the Work at the same time as they are submitted to Owner or Owner's representatives or agents.
- K. If the City determines it necessary to hire its own third party inspector(s), it will be at the City's expense and the City's inspector(s)

will be allowed to perform testing and take samples as they deem necessary or desirable during normal business hours. Any such inspection activities shall be insured with such types and coverage amounts of insurance as are required for Owner and Owner's contractors pursuant to Subsection (ix) below and, prior to entering the construction site, and shall provide the Owner with proof of such insurance. Any such insurance policies shall name the Owner and Owner's representatives as additional insureds.

vi. Inspection Disputes.

- A. If, upon its inspection of the Work, City reasonably believes there is any material deviation in the construction of the Work from what is required by the approved plans and specifications, the City shall provide written notice thereof to Owner within seventy-two (72) hours of the inspection identifying the specific deviations.
- B. Within seventy-two (72) hours of Owner's receipt of the City's notice, Owner shall either commence to correct the deviations and diligently prosecute such corrections to completion, or shall provide the City with written notice as to why correction is not necessary.
- C. Any dispute concerning corrective action of the Work shall be resolved in accordance with the following procedure: Such disputes must be evaluated first by the City Engineer and then by the Director of Public Works. Should such a dispute be ruled in favor of the Owner, it will be allowed, in whole or in part, and paid as provided herein. Should such a dispute be denied in whole or in part by the Director of Public Works the Owner may appeal to the City of Burlington's Chief Administrative Officer. Should such a dispute be denied in whole or in part by the City of Burlington's Chief Administrative Officer, the Owner may pursue any remedy available at law or in equity.

vii. TIF Administration – Monthly and Annual Reporting.

- A. To facilitate the City's ability to promptly reimburse Owner for TIF Eligible Costs in accordance the TIF Waterfall and Section 4 of this Agreement, quarterly (each quarterly report to be organized by month) throughout the performance of the Work Owner shall provide the City with a spreadsheet that itemizes the amounts invoiced by each contractor and subcontractor together with invoice numbers, the dates of work covered by the invoices and brief descriptions of the work performed by each contractor and subcontractor, together with copies of:
 - 1. requisitions submitted by contractors and subcontractors for

2. performance of the Work that describe the Work performed;
 2. evidence that the Work for which payment was requisitioned has been inspected and accepted under the inspection process outlined above; and
 3. evidence of payment that corresponds to the amount requisitioned.
- B. The City shall review the materials provided by Owner each month to confirm that the Work performed and the amount paid by Owner for the Work corresponds to the budgeted cost of the Work. If the City determines that the Work performed and the amount paid for the Work does not correspond to the budgeted cost of the Work, then it shall notify Owner of such determination within thirty (30) days after its receipt of Owner's submission, and the Parties shall work together in good faith to resolve the matter to their mutual satisfaction.
- C. To facilitate the City's ability to promptly reimburse Owner for TIF Eligible Costs in accordance the TIF Waterfall and Section 4 of this Agreement, prior to June 30 of each year throughout the performance of the Work Owner shall provide the City with annual reports with respect to items for which TIF funding is sought on forms provided by the City for such purposes, together with the back-up information and materials in the form specified by the City during the pre-construction and construction meeting process outlined above which the City must receive in order to expend TIF funds in compliance with applicable laws, rules and regulations, which information and materials must comply in form and substance with the requirements and rules of the Vermont Economic Progress Council as they may be amended from time to time.
- D. In accordance with the requirements established by the Vermont Economic Progress Council, the annual reports must include information regarding the number and types of jobs - both construction and new permanent jobs - created by the Work and by the completed Revised Project using the North American Industry Classification System (NAICS) three-digit code, organized by the number of jobs created per sector per fiscal year.
- viii. Certification and Completion. After the Work has been completed and accepted by the City (A) in the manner specified in the Future DRB Approval to the extent that such Work is covered thereby and (B) to the extent that such Work is not covered by the Future DRB Approval, Owner shall provide the City with: a certification from the project engineer that the Work was completed in accordance with the approved plans and specification; as-built drawings in hard copy, AutoCAD and PDF formats; and all additional documentation prepared by the project engineer with respect to the Work including, without limitation, notes, photographs, reports, quality control

testing reports, change orders, and submittals.

ix. Insurance.

- A. Liability Insurance. Throughout the performance of the Work, Owner agrees that Owner and Owner's general contractor shall obtain and maintain:
1. workers' compensation, disability benefit and other similar employee benefit acts as required by applicable law;
 2. Commercial Auto Liability insurance on all owned, non-owned and hired automobiles with a minimum combined limit of not less than Two Million Dollars (\$2,000,000) per occurrence; and
 3. Commercial General Liability Insurance covering Bodily Injury, Personal/Advertising Injury, Broad Form Property Damage, Products and Completed Operations Liability and Contractual Liability with limits of at least \$5,000,000 Combined Single Limit for each occurrence, to insure against all legal liability for personal injury (including death) and property damage suffered on or about the City Property or in the vicinity thereof (including within the adjacent public rights of way that will be under Owner's control pursuant to encumbrance permits issued for the Revised Project) or as a result of the exercise of rights granted pursuant to this Agreement.
- B. Professional Liability Insurance. Owner's general contractor and design professionals who prepare the final plans and specifications related to the Work shall carry a professional liability policy of errors and omissions insurance of at least \$2 million which names the City as an additional insured to the extent commercially available under customary practice, and Owner shall provide the City with certificates of insurance evidencing such coverage prior to the commencement of construction of the Work. If meeting such requirements would pose a hardship to any of Owner's design professionals, then the marginal cost of increasing such design professional's errors and omissions insurance coverage from \$1 million to \$2 million may be added to the cost of the Work as a TIF Eligible Cost by agreement of the Parties.
- C. All insurance shall be obtained from an insurer licensed in Vermont having an A.M. Best Rating of at least A-, financial size category VII or greater.
- D. Owner shall add the City as an additional insured on a primary non-contributory basis for any insurance policies with respect to the Work

identified in this Section 3(h)(ix), to the extent that the City has an insurable interest. In addition, the liability policies and workers' compensation policies shall include a waiver of subrogation in favor of the City for all policies where the City is listed as additionally insured in the manner required by the previous sentence. The City agrees to pay for any incremental additional cost associated with obtaining such waiver of subrogation.

- E. Owner agrees that the insurance referenced in this Section 3(h)(ix) specify that the coverage to benefit the City shall be primary over any insurance maintained by the City. The City agrees to pay for any incremental additional cost associated with having the coverage specify that the coverage to benefit the City shall be primary over any insurance maintained by the City.
 - F. Owner shall provide the City with certificates of insurance evidencing such coverages prior to the commencement of construction of the Work and annually upon the renewal thereof until certification and completion of the Work in accordance with Subsection (viii) above.
 - G. All certificates shall contain a provision stating that the coverages afforded under said policies will not be cancelled, materially changed or not renewed without at least thirty (30) days written prior notice to the City.
 - H. Owner shall, at its own expense, pay all deductibles in connection with its insurance coverage. Nothing herein shall preclude the Owner from insuring the Revised Project under an OCIP plan of insurance so long as the OCIP plan meets the coverage requirements set forth in this Section 3(h)(ix).
- x. Liability. Owner agrees to be liable for the acts of its contractors, agents, and employees in connection with the construction of the Revised Project. City agrees to be liable for the acts of its contractors, agents, and employees in connection with its inspection of Revised Project construction.

4. Waterfront TIF District; Payment for Public Improvements.

a. Waterfront TIF District. The BTC Property is situated within the City of Burlington's Waterfront Tax Increment Financing District (the "Waterfront TIF District"), within which the City is authorized to invest public funds to construct or acquire infrastructure improvements that facilitate private investment, all in accordance with Applicable Laws and regulations and following approval by the Vermont Economic Progress Council, by the Burlington City Council and with the support of the voters via a public referendum. Municipal debt incurred within the Waterfront TIF District is repaid using the incremental increase in property taxes generated by the real property located within the District over the property taxes that were generated by the District at the time that the District

was first established, all as more particularly set forth and described in the laws and regulations by which the District was established and is now governed. The Vermont Legislature has authorized the City to issue Waterfront TIF District debt associated with the BTC Property no later than June 30, 2022 and to extend the period to retain municipal and education tax increment for the BTC Property until June 30, 2035 as long as Owner shall have, prior to debt issuance, provided to the City, for submission to the Vermont Economic Progress Council, an executed construction contract and a completion guarantee evidencing Owner's commitment to construct not less than \$50,000,000 (the "TIF Construction Contract") of private development on the Property. Owner acknowledges that in addition to any other limitations set forth and described in this Agreement, the City's ability to reimburse Owner for TIF Eligible Costs is dependent on Owner's compliance with the statutory requirements and approvals required in this provision.

b. Not to Exceed TIF Funding Amount. On November 8, 2016, the voters of the City of Burlington authorized the City Council to pledge the credit of the City to secure the repayment of indebtedness or make direct payment for the purpose of funding certain public improvements and related costs serving the Waterfront TIF District in an amount not to exceed \$21,830,000.00 (the "Not to Exceed TIF Funding Amount") as described more particularly in Question 4 of the November 8, 2016 municipal ballot. The Parties acknowledge and agree that the Not to Exceed TIF Funding Amount was premised on the expected tax increment to be generated by the Original Project and that the reduced scale and the Owner's proposed phasing of the Revised Project will not support issuance of indebtedness close to the Not to Exceed TIF Funding Amount.

c. Available TIF Funding; Conditions for Issuance of TIF Debt.

i. Available TIF Amount. The City preliminarily estimates that the tax increment that would be generated by the Revised Project over a period beginning with the expected dates (as shown on the Revised Project Schedule) for issuance of a Unified Certificate of Occupancy for all Phases of the Private Improvements and ending June 30, 2035 could support issuance of an estimated \$10,000,000 in TIF debt (the "Estimated TIF Funding Amount"). The City makes no representation whatsoever about the actual amount of TIF debt the Revised Project will actually support. As the Revised Project progresses through design development, the City will update and finalize its determination of the amount of TIF debt that the Revised Project would support (the City's final determination of such being referred to herein as the "Available TIF Amount"). Until the City has made a final determination of the Available TIF Amount, the parties shall use the Estimated TIF Funding Amount for planning purposes as a placeholder for the Available TIF Amount. The City shall determine both the aggregate Available TIF Amount that would be supported by the Revised Project, as well as the respective amounts that each Phase of the Revised Project would support, all based on the Revised Project Schedule and the parameters for the Waterfront TIF District. Owner agrees that the City's obligations to calculate the Available TIF Amount require Owner's timely cooperation and provision of requisite information about the Revised Project and that in no event (including an Event of Force Majeure) will the City's obligation to calculate

the Available TIF Amount extend beyond April 1, 2022.

ii. Conditions for Incurrence of TIF Debt. Subject to and in reliance on satisfaction of the conditions set forth in Subsections (A) – (K) of this Section 4(c)(ii), on or prior to June 30, 2022, the City shall incur TIF debt in an amount equal to the portion of the Available TIF Amount that can be supported by the Phases of the Private Improvements, if any, that have Commenced Construction as of June 1, 2022:

- A. On or prior to June 30, 2021, the City and Owner shall have agreed on the Final Budget and the TIF Eligible Costs to be allocated and distributed pursuant to the TIF Waterfall, provided that such date will be extended as necessary but no later than September 30, 2021, to allow the Parties to finalize the plans and specifications for the Work and to finalize the Final Budget consistent with the timelines contemplated in Section 3 for the same.
- B. On or prior to March 1, 2022, Owner shall have provided to the City, for submission to the Vermont Economic Progress Council, the fully executed TIF Construction Contract and the fully executed completion guarantee covering the full scope of work that the determination of the Available TIF Amount is based on and evidencing Owner's commitment to construct not less than \$50,000,000 of private development on the BTC Property. The TIF Construction Contract shall include the full scope of the Public Improvements and any Additional Public Improvements and shall be consistent with the Revised Project Schedule.
- C. On or prior to April 1, 2022, the City shall have confirmed the Available TIF Amount, including the respective amounts that each Phase of the Revised Project would support.
- D. Owner shall pay the City's TIF Borrowing Costs until Completion of the Revised Project.

On or prior to May 1, 2022, the City shall have determined the City's expected borrowing costs (which shall not include amortization of principal payments during the construction period) in connection with the debt issuance for the TIF during the period commencing with the issuance of the TIF debt and ending on the July 1 after the next April 1 following the expected date (based on the Revised Project Schedule) of issuance of a Unified Certificate of Occupancy

for whatever Phase(s) of the Revised Project is/are used to support the TIF debt (the “Expected TIF Borrowing Costs”).

Notwithstanding the amount of the Expected TIF Borrowing Costs, the Owner shall be obligated to pay the City’s actual borrowing costs (which shall not include amortization of principal payments during the construction period) in connection with the TIF debt issuance during the period commencing with the issuance of the debt and ending on the July 1 after the next April 1 following the actual date of issuance of a Unified Certificate of Occupancy for whatever Phase(s) of the Revised Project is/are used to support the TIF debt (the “Actual TIF Borrowing Costs”). Within sixty (60) days following the end of the period described in the previous sentence, the City will calculate the Actual TIF Borrowing Costs and provide an invoice to Owner for the amount by which the Actual TIF Borrowing Costs exceeded the Expected TIF Borrowing Costs, which, except to the extent reasonably and in good faith disputed by Owner, such undisputed amount shall be paid by Owner to the City within thirty (30) days of receipt of the City’s invoice, with reasonable supporting documentation. In the event that within such thirty (30) day period following receipt of the City’s invoice and reasonable supporting documentation Owner reasonably and in good faith disputes all or a portion of the amount due, Owner shall submit to the City the agreed-upon amount due, and the Parties shall thereafter for a period not to exceed thirty (30) days work together in good faith to resolve the amount in dispute. In the event that the Parties cannot resolve their dispute within such thirty (30) day period, then either Party may take such actions as may be available under this Agreement and/or Applicable Laws.

“TIF Borrowing Costs” herein shall mean, as applicable, the Expected TIF Borrowing Costs and/or the Actual TIF Borrowing Costs.

- E. On or prior to May 1, 2022, the Vermont Economic Progress Council shall have issued all required approvals/confirmations relating to, and the City’s bond counsel shall have approved, the structure of the TIF debt to be issued by the City.
- F. On or prior to June 1, 2022, the Owner will fund an escrow

account or provide an irrevocable letter of credit, in either case for the benefit of and upon terms reasonably acceptable to the City, in an amount equal to the Expected TIF Borrowing Costs, or an alternative form of guaranty to the City that is satisfactory to the City in its sole determination. The purpose of such escrow account, letter of credit, or alternative guaranty, is to establish a source of funds to pay Estimated TIF Borrowing Costs to the City. Accordingly, the City will have the immediate and unconditional right on a monthly basis to draw on such escrow account, letter of credit, or alternative guaranty to pay monthly installments of the Estimated TIF Borrowing Costs, in advance, commencing with the issuance of the TIF debt and ending on the July 1 after the next April 1 following the actual date of issuance of a Unified Certificate of Occupancy for whatever Phase(s) of the Revised Project is/are used to support the TIF debt.

- G. On or prior to June 1, 2022, Owner shall have (1) closed on construction financing with respect to the TIF Construction Contract, and (2) Commenced Construction pursuant to the TIF Construction Contract.
- H. On or prior to June 1, 2022, Owner shall pay to the City for contribution by the City into the Waterfront TIF District an amount equal to \$150,000 per year (pro rated for any partial year) from April 1, 2019 until the date Owner Commences Construction of the Revised Project. Owner and the City agree that such payment will approximate lost real estate tax revenue to the Waterfront TIF District during the period of construction inactivity between the Original Project and the Revised Project.
- I. On or prior to July 1, 2024, Owner shall have obtained a Unified Certificate of Occupancy for the first of the Northwest Tower or the Northeast Tower.
- J. On or prior to July 1, 2025, Owner shall have obtained a Unified Certificate of Occupancy for the second of the Northwest Tower or the Northeast Tower.
- K. On or prior to July 1, 2025, Owner shall have obtained a Unified Certificate of Occupancy for the South Tower.

iii. Owner Failure to Meet TIF Conditions.

- A. In the event that Owner fails to timely meet any of the conditions set forth in Section 4(c)(ii)(A) – (H) prior to the City’s issuance of the TIF debt, then the City shall have no obligation to issue the TIF debt and, therefore, no obligation to reimburse Owner for any TIF Eligible Costs; provided that Owner shall have up to thirty (30) days to cure a missed deadline to the extent that failure to timely meet such condition is curable and such opportunity to cure does not materially and adversely affect the timing of the other conditions for the issuance of TIF debt and provided that in no event shall such cure period extend beyond June 15 2022. In no event shall Owner’s obligation to timely satisfy the conditions set forth in Section 4(c)(ii)(A) – (H) be extended for a Force Majeure Event. The City’s rights in response to the failure of the Owner to meet one or more of the conditions set forth in Section 4(c)(ii)(A) – (H) prior to the City’s issuance of the TIF debt shall be in addition to the City’s rights under Section 1(m) of this Agreement. Except as provided herein, the City shall have no other remedies at law or in equity in response to the failure of the Owner to meet one or more of the conditions set forth in Section 4(c)(ii)(A) – (H) prior to the City’s issuance of the TIF debt.
- B. In addition, in the event, following the City’s issuance of the TIF debt, Owner fails to timely obtain a Unified Certificate of Occupancy for any of the Phases of the Revised Project as provided in Section 4(c)(ii)(I), (J), and/or (K), as may be extended for a Force Majeure Event (subject to Section 4(c)(iii)(C)), the City will have the right to redeem the TIF debt as set forth herein. The City may redeem the TIF debt by providing Owner at least sixty (60) days written notice prior to redemption, in which case the City shall have no obligation to reimburse Owner for any TIF Eligible Costs attributable to the Public Improvements and any Additional Public Improvements that were to be constructed in connection with Phase(s) that were not timely completed, provided that, subject to all other requirements for reimbursement set forth in this Agreement, the City shall remain obligated to reimburse Owner for the TIF Eligible Costs attributable to the Public Improvements and any Additional Public Improvements that were constructed and delivered to the City in connection with Phase(s) that were timely completed. Notwithstanding the foregoing, if, notwithstanding the Owner’s failure to obtain the Unified

Certificate of Occupancy by the applicable deadline, and if Owner replenishes the escrow account, letter of credit, or alternative guaranty established as a source of funds to pay the Estimated TIF Borrowing Costs to the City to the extent needed to cover anticipated additional TIF Borrowing Costs, as determined by the City, and if Owner is diligently pursuing such Unified Certificate of Occupancy and such Unified Certificate of Occupancy can reasonably be expected to be issued within 120 calendar days following such deadline, the City shall not redeem the TIF debt unless the Owner has not obtained the Unified Certificate of Occupancy by the end of such 120-day period. In no event shall the City's redemption rights set forth in this Section 4(c)(iii)(B) be tolled for a Force Majeure Event. The City's redemption rights in response to the failure of the Owner to timely obtain a Unified Certificate of Occupancy for any of the Phases of the Revised Project as provided in Section 4(c)(ii)(I), (J), and/or (K) shall be in addition to the City's rights under Section 4(d) and Section 1(m) of this Agreement. Except as provided herein, the City shall have no other remedies at law in response to the failure of the Owner to timely obtain a Unified Certificate of Occupancy for any of the Phases of the Revised Project as provided in Section 4(c)(ii)(I), (J), and/or (K). Notwithstanding the foregoing, nothing in this Section 4(c)(iii)(B) shall limit or affect the City's right, which the City expressly retains, to seek available remedies at law or in equity for failure of the Owner to meet its obligations under Section 4(c)(ii)(D) and/or (F) following the City's issuance of the TIF debt.

- C. The deadlines for obtaining a Unified Certificate of Occupancy for each of the Phases set forth in Sections 4(c)(ii)(I) – (K) above shall be extended for Events of Force Majeure, provided that Owner remains obligated to pay the Estimated TIF Borrowing Costs and to replenish the escrow account, letter of credit, or alternative guaranty established as a source of funds to pay the same.
- iv. TIF Cooperation. The City will cooperate with Owner in good faith in connection with Owner's obligation to satisfy the above-listed conditions for issuance of the TIF debt.
- v. TIF Debt Tranches. The City shall investigate the ability to issue TIF debt in tranches corresponding to the respective Phases of the Revised Project that are used to support the TIF debt, such that (A) TIF proceeds would be available to reimburse TIF Eligible Costs as the Public Improvements are

completed and delivered to the City concurrent with the respective Phases of the Revised Project (as described in Section 1), and (B) the TIF Borrowing Costs could be reduced as the respective Phases of the Revised Project are Completed.

- vi. Legislative Matters. To the extent that the City has successfully issued TIF debt for the Revised Project, but issued such TIF debt for less than the Available TIF Amount, the Parties shall reasonably cooperate in good faith to support legislative changes in the 2022 (and subsequent, if applicable) legislative session(s) to facilitate the issuance of additional rounds of TIF financing as may be supported by later Phases of the Revised Project.

d. Payment for Construction of Public Improvements and Additional Public Improvements. Subject to the requirements and contingencies set forth in this Agreement, Owner shall construct and equip the Public Improvements and any Additional Public Improvements. Owner shall construct and equip the Public Improvements and the Additional Public Improvements that are included in the Revised Project (excluding any Additional Public Improvements that the City either agrees to construct itself or excludes from the Revised Project because their inclusion would exceed the amount available under the TIF Waterfall) at its own cost and expense, and the City shall reimburse Owner for agreed-upon TIF Eligible Costs in accordance with the TIF Waterfall and in the manner set forth in this Agreement, subject the conditions set forth above in Section 4(c)(ii) and below in this Section 4(d); provided however, that the City may partially reimburse Owner for such costs sooner at its discretion. The City acknowledges that the Owner will construct the Public Improvements and any Additional Public Improvements in reliance upon the City's agreement to reimburse Owner for agreed-upon TIF Eligible Costs in accordance with the TIF Waterfall and in the manner set forth in this Agreement, subject to the conditions set forth above in Section 4(c)(ii) and below in this Section 4(d). Subject to the Future DRB Approval and Applicable Laws, the City shall cooperate in good faith and take such steps as may be reasonably necessary and appropriate to facilitate Owner's receipt of a final Unified Certificate of Occupancy for the first of the Northeast Tower or Northwest Tower on or prior to July 1, 2024, for the second of the Northeast Tower or Northwest Tower on or prior to July 1, 2025 and for the South Tower on or prior to July 1, 2025. The City's obligation to reimburse Owner for agreed-upon TIF Eligible Costs in the manner set forth in this Agreement shall be subject only to the TIF Waterfall, Applicable Laws, and following conditions and otherwise shall be unconditional and fully binding on the City:

- i. City and Owner shall have agreed upon the plans and specifications with respect to constructing and equipping the Public Improvements and any Additional Public Improvements that are added to the Revised Project as provided in Section 3;
- ii. City and Owner shall have agreed upon the detailed Final Budget relative to the TIF Eligible Costs for which reimbursement is sought as provided in Section 3, including the cost to design, construct and equip any Additional Public Improvements that are added to the Revised Project;
- iii. The City shall have received completed monthly and annual reports with respect to TIF Eligible Costs for which reimbursement is sought on forms to be provided

to the Owner by the City for such purposes as provided in Section 3(h)(vii)(C) of this Agreement. Except as may be required by Applicable Laws, no other materials, forms or information shall be required of the Owner as a condition to the reimbursement. The City shall notify the Owner if any monthly report or annual report is not timely received by the City, in which case the Owner shall file such report within thirty (30) days following receipt of such notice;

- iv. In satisfaction of the applicable conditions set forth in Sections 4(c)(ii)(I) – (K), Owner shall have timely received a final Unified Certificate of Occupancy for the applicable Phase(s) of the Revised Project, as may be extended for a Force Majeure Event (subject to Section 4(c)(iii)(C)).
- v. Owner shall have timely on or prior to the outside dates set forth in the Revised Project Schedule, as may be extended for a Force Majeure Event (subject to Section 4(c)(iii)(C)) completed and delivered to the City, and the City shall have accepted (which acceptance shall not be unreasonably withheld or delayed), the Public Improvements corresponding to the applicable Phase(s) of the Revised Project and any applicable Additional Public Improvements in accordance with the terms of this Agreement.
- vi. Owner and the City shall have executed an agreement memorializing the terms of Section 4(e) in the form attached as **Exhibit E**;
- vii. Owner shall have satisfied all of the conditions set forth in Sections 4(c)(ii)(A) – (H).
- viii. Solely with respect to any Additional Public Improvements that are not complete at the time that the Revised Project is Complete and the foregoing conditions (i) through (vii) have been satisfied with respect to all Public Improvements, the City's obligation to reimburse Owner for the cost of designing and constructing such Additional Public Improvements shall be subject to satisfaction of the foregoing conditions (i), (ii) and (iii) with respect to such Additional Public Improvements, together with the City's receipt of: the certification from the project engineer that such Additional Public Improvements were completed in accordance with the approved plans and specifications; as-built drawings in hard copy, AutoCAD and PDF formats; and all additional documentation prepared by the project engineer with respect to such Additional Public Improvements including, without limitation, notes, photographs, reports, quality control testing reports, change orders, and submittals, as required by Section 3(h)(viii). For clarity, the City agrees that the City shall reimburse Owner, subject to the TIF Waterfall and in accordance with the terms of this Agreement, for all Work (other than any incomplete Additional Public Improvements) upon satisfaction of the conditions set forth in (i) through (vii) above, and thereafter, upon completion of such Additional Public Improvements, the City shall reimburse Owner in accordance with the terms of this Section 4(d)(viii).

Owner will provide written notice to the City upon Owner's timely satisfaction of all of the above-stated conditions, whereupon the City will promptly (as provided below) reimburse the Owner (and/or the Owner's bank per any credit agreement between the City, Owner and any such bank) all documented and agreed-upon TIF Eligible Costs incurred by Owner in connection with the Public Improvements associated with such Phase(s) of the Revised Project and/or the applicable Additional Public Improvements in accordance with the Final Budget and the TIF Waterfall and the other provisions of this Agreement. The Parties acknowledge that, upon Owner's timely satisfaction of all of the above-stated conditions, time shall be of the essence with respect to the City's obligation to reimburse Owner for the applicable Public Improvements and or the Additional Public Improvements as set forth in this Agreement. If, notwithstanding Owner's timely satisfaction of all of the above-stated conditions, the City fails to reimburse the Owner for the applicable Public Improvements and/or any applicable Additional Public Improvements as set forth in this Agreement within thirty (30) days of Owner's notice of timely satisfaction of all of the above-stated conditions, the City shall pay, in addition to all TIF Eligible Costs agreed to be reimbursed to the Owner by the City pursuant to the TIF Waterfall and this Agreement, interest at a rate equal to a default rate of twelve percent (12%) per annum. If the City has not reimbursed the Owner for the applicable Public Improvements and/or any applicable Additional Public Improvements as set forth in, and subject to the terms of, this Agreement within one hundred eighty (180) days of Owner's timely satisfaction of all of the above-stated conditions, then Owner may pursue remedies available at law or in equity to recover such amount. The City shall execute such documentation as Owner and/or Owner's financing partner and/or third-party lender may reasonably request to evidence its obligation to reimburse Owner pursuant to the TIF Waterfall and this Agreement for the costs described in this Section 4(d) in accordance with and subject only to Owner's timely satisfaction of all of the above-stated conditions.

For clarity, in the event Owner does not timely satisfy all of the above-stated conditions, the City shall not be obligated to reimburse Owner, and Owner shall have no right to reimbursement from the City, for TIF Eligible Costs, but in no event shall Owner's failure to timely satisfy all of the above-stated conditions eliminate, diminish, or otherwise affect the obligation of Owner to construct and equip the Public Improvements concurrent with the construction of the Revised Project.

e. The Parties acknowledge and agree that the construction of the Public Improvements and any Additional Public Improvements will be bid, and will be accounted for, separately from the Private Improvements, and the City is only legally able to use Waterfront TIF District funds to pay for TIF Eligible Costs. In addition, as stated above, the amount of money that the City is able to pay for the Public Improvements and any Additional Public Improvements is limited by the obligation that the debt must be committed prior to June 30, 2022 and by the obligation that the tax increment generated by the Private Improvements must be sufficient to service the debt incurred by the City to pay such costs. The Parties acknowledge that the tax increment generated by the real property owned by Owner numbered 101 Cherry Street, Burlington, Vermont and identified as Parcel No. 044-4-004-001, which is improved with a four-story mixed-use (retail/office) building, is also legally permitted to contribute to the payment of debt service on the municipal debt issued to finance the City's payments under this Section 4. The City will assess the Larger BTC Property and 101 Cherry Street using the normal assessment procedure required by applicable state law, provided that if the City finds it necessary to ensure that the total tax increment generated by the Private Improvements (as they may be Completed from time to time), by those portions of the Larger BTC Property that are not developed as part of the Revised Project from time to time, and by 101 Cherry Street is

sufficient to pay the debt service on the municipal debt issued to finance the City's payments under this Section 4, the City shall establish the minimum assessed value of the Larger BTC Property upon completion of the respective Phases of the Revised Project so that sufficient tax increment is generated to pay the debt service on the municipal debt, and the City shall provide Owner with documentation that reasonably substantiates the assessed value of the Property established by the City for such purposes. Any such minimum assessment of the Larger BTC Property shall only be in effect during the period of municipal debt repayment and only while necessary to ensure the total tax increment generated by the Private Improvements is sufficient to pay the debt service on the municipal debt. Owner agrees not to appeal the minimum assessment of the Larger BTC Property in an effort to reduce it below the value established by the City pursuant to this paragraph, and Owner shall pay property taxes based upon at least that minimum assessed value during the period of municipal debt repayment regardless whether any portion of the Larger BTC Property is owned by an entity that is statutorily exempt from property taxation or that is subject to statutorily limited or reduced property taxation. The Owner's agreement to pay such property taxes and not to appeal such assessment during the period of municipal debt repayment is hereby established as a covenant binding upon Owner and its successors and assigns running with title to the Larger BTC Property and having the same degree of priority as municipal property taxes until such time as the municipal debt shall have been paid in full. At the City's request, and subject to the reasonable requirements of Owner's construction or permanent financing, the foregoing agreement shall be memorialized by an agreement to be executed by the Parties and recorded in the land records prior to the City's payment for the Public Improvements and any Additional Public Improvements and shall be a contractual covenant binding upon Owner and its successors and assigns, running with the title to the Larger BTC Property regardless of the tax exempt status of the owner of any portion of the Revised Project or Larger BTC Property.

f. The Parties agree and acknowledge that the Owner may pledge any rights it has under this Agreement to reimbursement for TIF Eligible Costs as additional security to its lender(s) or other financing parties. At Owner's request, the City shall enter into a separate agreement with Owner and/or with Owner's construction lender solely with regard to the City's reimbursement of TIF Eligible Costs so long as such separate agreement contains terms and conditions that are consistent with those contained in this Agreement with respect to such matters and that do not impose any additional material obligations on the City or the Owner. Without limiting the foregoing, the City agrees to work cooperatively and in good faith with the Owner's construction lender to provide the construction lender with assurance of funding for the Public Improvements in accordance with but subject to the terms and provisions of this Agreement, including without limitation by entering into a customary and commercially reasonable intercreditor agreement or collateral assignment agreement required by said construction lender (meaning that Owner may assign its rights under this Agreement to receive payment and reimbursement from the City as security for Owner's construction loan, with the understanding that although such assignment shall be a present assignment of its rights under this Agreement, the construction lender will only enforce the assignment if Owner defaults under its construction loan), recognizing that the City, as a municipal body, may be limited in entering into agreements that may be deemed "commercially reasonable" among private parties. There shall be no conditions to the Owner receiving the reimbursement from the City other than the conditions set forth in Section 4(d)(i) – (viii) with respect to TIF Eligible Costs and subject to the TIF Waterfall. Owner shall not be obligated to start the construction of the Revised Project until the City provides the required assurances to the construction lender as set forth in this Section 4(f) and

until the City provides documentation reasonably satisfactory to the Owner that the City is obligated to reimburse the Owner for the agreed-upon cost of constructing the Public Improvements in the manner set forth in this Agreement. Owner shall make any such requests of the City in writing, including all associated documentation in connection therewith, not later than forty-five (45) days prior to Commencement of Construction. The City shall be obligated to provide the documentation and the assurances referenced above even if the Owner Commences Construction of the Revised Project prior to finalization of such assurances and documentation. Notwithstanding anything to the contrary contained in this Section 4(f), in no event shall this Section 4(f) be interpreted to require the City to expand its obligations under this Agreement or provide assurances any greater than the City's obligations under this Agreement.

g. Matters Relating to Parcel 1 and Parcel 3.

- i. 100 Bank, LLC Easement Rights. Some or all of the City Property is subject to certain rights of the 100 Bank, LLC set forth in the Declaration of Reciprocal Easement of FM Burlington Company, dated September 29, 1982, recorded in Book 283, page 500 of the Burlington Land Records, as amended by Amendment to Declaration of Reciprocal Easements, dated June 28, 1989, recorded in Book 597, page 368 of the Burlington Land Records, and a Second Amendment to Declaration of Reciprocal Easements, dated January 5, 2004, recorded in Book 853, page 639 of the Burlington Land Records (the "100 Bank Easement"). The Parties will cooperate in good faith to resolve or eliminate the 100 Bank Easement as follows: BTC shall initially be responsible for attempting to resolve or eliminate the 100 Bank Easement to allow for the Revised Project, including the Public Improvements (and the improvements comprising the scope of work under the MPI Contract (the "Modified Public Improvements") to the City's reasonable satisfaction. Owner and the City shall delineate the acquisition cost of such rights as to (A) those required for the Private Improvements, the cost of which will be borne by Owner, and (B) those required for the Pubic Improvements (and the Modified Public Improvements), the cost of which will be borne by the City. Only the costs required for the Public Improvements shall be a TIF Eligible Cost. If Owner is not successful in resolving or eliminating the easement rights as needed for the Public Improvements prior to June 30, 2021, then the City shall take over responsibility obtaining the rights required for the Public Improvements (and the Modified Public Improvements), in which case the Owner shall retain responsibility for obtaining any rights necessary for the Private Improvements.
- ii. Maintenance. Upon completion and delivery to the City of any Public Improvements, the City shall maintain them in accordance with its standard maintenance practices and standards.
- iii. Temporary Street Closures. The Burlington Police Department ("BPD") is vested with the authority to allow temporary street closures, following consultation with the Department of Public Works ("DPW"), for events

sponsored by private individuals and entities and has in place a process for the issuance of temporary street closure permits. The City acknowledges that the Owner intends to seek temporary street closures adjacent to the Revised Project for fairs, events, and promotions and will not unreasonably interfere with Owner's application to close streets in connection with such events, subject to any applicable fees. If Owner desires to establish a process to facilitate its ability to close St. Paul Street and Pine Street on an expedited basis for events, fairs and other promotions, it shall develop a bi-annual or annual calendar of events and submit the calendar to BPD and DPW for their prompt review and approval, and it shall also use reasonable efforts to coordinate all public events that require temporary street closures with the Church Street Marketplace, the Burlington Business Association ("BBA") CEDO and GMT, provided that such organizations are reasonably cooperative, in advance of any closure request.

- iv. On-Street Parking; Loading. The Public Improvements shall be constructed in substantial compliance with the City's "Great Streets" standards, in a manner agreed upon by the Parties, which are likely to physically preclude on-street parking along such street sections. The City will agree to enter into a fifteen (15) year license agreement with Owner to prohibit on-street parking and allow restricted passenger drop off and loading zones within the new sections of St. Paul Street and Pine Street daily from 6 a.m. until 7 p.m. upon the City's standard terms and conditions, including an aggregate cost to Owner of ten dollars (\$10.00).
- v. Temporary Relocation of Municipal Property. If Owner desires the ability to temporarily relocate benches, trash cans and other similar items of municipal property located along the new sections of St. Paul Street and Pine Street to accommodate events, fairs and other promotions, then the City shall grant Owner such temporary relocation right as long as Owner (1) accomplishes such temporary relocation (including removing and replacing the property) at its sole cost and expense, (2) stores and then returns the relocated municipal property where directed to by the City, and (3) promptly repairs and restores any damage that arises in connection with such temporary relocation (or, if appropriate, replaces damaged property) at its expense. Owner shall indicate on the bi-annual or annual calendar of events that it develops pursuant to Section 4(g)(iii) above whether it desires to exercise this temporary relocation right in connection with each event.
- vi. Discontinuance. Concurrent with the execution and delivery of this Agreement, the City shall grant Owner a right of first offer with respect to Parcel 1 and Parcel 3 in the form attached as **Exhibit G** hereto. In addition, the Parties acknowledge that if the new sections of St. Paul Street or Pine Street are discontinued as municipal streets, then current law provides that title to the discontinued right-of-way shall belong to the owners of the adjoining lands in accordance with 19 V.S.A. § 775.

h. Sales Tax Reallocation or Exemptions. The City agrees to use its diligent, reasonable and good faith efforts to support Owner's efforts to apply for and obtain sales tax exemptions, refunds and/or abatements for items purchased during construction (Construction Sales Tax Exemption) that are normally available from the State of Vermont to qualified Vermont development projects such as the Revised Project. Any reallocation of Revised Project sales tax that is awarded by the State of Vermont shall be used by the Parties to pay for mutually agreed-upon expenditures that support the Revised Project and that meet the requirements established by the State of Vermont, and the Parties shall prepare a budget for such purpose.

i. Municipal Fees.

i. Recognizing (A) the economic and non-economic benefits that are anticipated to flow from the development and construction of the Revised Project, (B) the size and scope of the Revised Project and the amount of the permitting fees realized by the City in connection with the Revised Project, (C) the commitment of resources dedicated by the Owner to the Revised Project, and (D) the Revised Project being an amendment to the Original Project, the Parties agrees that:

1. (a) Having paid to the former Burlington Department of Planning and Zoning a municipal zoning fee of at least \$262,500.00 in connection with the application for the Original Project, (b) having paid the Unified Certificate of Occupancy fee of \$26,280 in connection with the Revised Project, and (c) having paid an application fee of \$155 to amend its Original Project application, Owner shall not be required to pay any additional zoning application fees for the Revised Project.
2. In addition, Owner shall not be required to pay to the Burlington Department of Permitting and Inspections more than \$262,500.00 to obtain the remaining building trade permits required for the Revised Project (being building, mechanical, electrical and plumbing), including any associated inspection fees, regardless whether such fees are imposed directly on Owner or are imposed on Owner's general contractor or a subcontractor. Any payment already made by the Owner or any of Owner's contractors or subcontractors in connection with the Original Project or Revised Project shall be applied against the foregoing fee. For instance, fees for demolition, electrical work, enabling work and other work such as HVAC if already paid to the Department of Public Works shall be applied against the total fees stated above. To the extent Owner has paid to the former Burlington Department of Planning and Zoning a municipal zoning fee in excess of \$262,500.00 in connection with the application for the Original Project, such excess payment has been or shall be credited against the fees payable to the Burlington Department of Permitting and Inspections described above.

3. Owner shall pay no more than \$75,000 in fees under Chapter 13 of the City's Code of Ordinances ("Fire Protection and Prevention") in connection with the Revised Project, including without limitation any fees required for permits and inspections required thereby, such as permits related to Revised Project fire suppression and the Revised Project fire alarm system;
 4. Owner shall pay all encumbrance permit fees that may be required by the City in connection with the Revised Project, including those due for any ongoing, unpermitted encumbrances at then existing rates and in conformance with then existing City policies; and
 5. Owner shall pay the full impact fee required in connection with the Revised Project as described in the Future DRB Approval, which amount will include any impact fee waiver attributable to affordable housing that is available under Section 12.0 of the City's Impact Fee Administrative Regulations as most recently updated and will include a full credit for the retail and garage spaces that were demolished as part of the Original Project and applied to any building area constructed to replace the demolished retail and garage spaces and used for a permitted use.
 6. Consistent with Chapter 27, Article 2 of the Burlington Code of Ordinances, Owner shall not be obligated to pay Excavation Fees associated with the work to construct Public Improvements and Additional Public Improvements on the City's behalf, provided that Owner shall be responsible for on-site inspection, including inspection documentation required by the City in conformance with then existing City Standards for Construction.
 7. Consistent with Chapter 27, Article 2 of the Burlington Code of Ordinances, Owner shall be obligated to pay only the Administrative Fee for Excavation fees (at rates current as of the date of permit) for Private Improvements within the Right of way where Public Improvements or Additional Public Improvements are planned. For all other rights of way where Private Improvements are required and where no Public Improvements or Additional Public Improvements are planned, all Excavation Fees will apply.
- ii. Owner shall apply for and obtain all zoning and building permits for the Revised Project in the Owner's name and hold such permits for both the benefit of the Owner, and for the benefit of the Owner's general contractor and all subcontractors. Owner and Owner's contractors and subcontractors shall apply for and obtain all building and building trade permits for the Revised Project either in the Owner's name or in the contractor's or

subcontractor's name, as appropriate depending on the nature of the work covered by the permit, and shall hold such permits for the benefit of the work covered by the permit. Neither the Owner's general contractor, nor any subcontractor, shall be required to apply for and obtain a separate building or zoning permit in connection with the Revised Project if Owner already holds such permit in connection with the Revised Project. All work performed as part of the Revised Project must be properly permitted and inspected; however, if a separate building or zoning permit for Owner's general contractor or any subcontractor is required by the City, then the City shall not assess any fees in connection with such additional permits in excess of the fees established by this paragraph.

- iii. The agreement regarding fees contained in this Section (4)(i) only applies to the Revised Project, and only to the specific fees referenced and itemized above; any fees not referenced and itemized above shall be payable at standard rates.
- iv. If Owner modifies the Revised Project and seeks or is required to seek amendments to the Future DRB Approval for the Revised Project, or to the zoning or building permits issued in connection therewith, then Owner shall pay the standard fees associated with such new or amended permits, if any.
- v. This Section (4)(i) does not limit the City's right to impose, or Owner's obligation to pay, any fines, penalties or other fees that may be imposed or assessed as the result of any violations of applicable permit conditions, ordinances, laws or regulations.

5. Cooperation; Labor and Community Workforce; Construction Management and Coordination; Further Assurances.

a. Cooperation. The Parties shall cooperate and communicate with each other on a regular basis, including by arranging joint meetings with appropriate personnel present to address issues set forth in this Agreement, to discuss any proposed changes to the Revised Project and to discuss the plans and specifications for the Work generated as the Revised Project progresses, so as to permit the orderly and efficient construction and development of the Revised Project. The City will in good faith support adjustments or modifications to the Revised Project that are pursued by the Developer, including providing support in connection with any required municipal approvals or processes, provided that such adjustments or modifications are consistent with the City's objectives and policies, all in the City's sole discretion and provided that the City shall have the right to approve or deny Major Changes in its sole discretion.

b. Labor and Community Workforce. Owner and the City agree to the following:

- i. Owner will use reasonable efforts to provide jobs for qualified low and moderate income residents of Burlington and surrounding areas to construct and operate the Revised Project. Owner will also use reasonable efforts to

employ (either directly, or indirectly through its general contractor and the Revised Project's subcontractors) the unemployed, veterans, minorities, women, New Americans (collectively, "Targeted Job Applicants"), so long as such individuals have the requisite skills and experience required for the respective job position and otherwise meet all requirements for said jobs, to construct and operate the Revised Project.

- ii. Owner shall use reasonable efforts to post notice of job openings in advance of hiring for all positions. Job openings may be advertised in specific online and physical locations identified by and recommended by CEDO.
- iii. Owner and its general contractor will participate in two job fairs sponsored by the City or by one or more City affiliates prior to or during construction of the Revised Project. Owner shall also participate in at least one post-construction job fair. The City will partner with key agencies and organizations to provide support for such job fairs.
- iv. Owner agrees to identify the jobs and skills needed to operate the Revised Project upon completion, and it shall encourage tenants of the Revised Project to participate in jobs fairs to support recruitment of Targeted Job Applicants in permanent jobs and to encourage tenants of the Revised Project to notify and publish job openings in specific online and physical locations identified by CEDO.
- v. Owner will include in its general contract for the Revised Project a requirement that the labor employed to construct the Revised Project (including without limitation labor employed by Owner and by Owner's general contractor and by the Revised Project's subcontractors) shall be paid a "livable wage" as that term is defined in the City of Burlington Livable Wage Ordinance as is in effect on the date of this Agreement. Owner and its general contractor shall complete and return an annual reporting form provided by the City to report on its compliance with this provision, consistent with the Burlington Livable Wage Ordinance.
- vi. Owner will use reasonable efforts to incorporate locally and regionally sourced materials, products and services in the Revised Project. Owner will support and cooperate with the City's efforts to publicize the Revised Project's use of locally and regionally sourced materials, products and services.
- vii. With regard to the construction of the Private Improvements, Owner shall hire contractors and subcontractors who pay appropriate wages, properly classify employees, obey labor laws, participate (where applicable) in formal apprenticeship training programs, and provide employer funded health and retirement benefits, with the understanding that it is the Parties' intent that the foregoing shall not be understood to preclude the Owner from engaging any qualified contractor or construction manager to construct the Revised Project.

To evidence its compliance with this provision, annually throughout the construction of the Revised Project Owner shall require contractors and subcontractors who are then working on the Revised Project and who perform work or are expected to perform work with a value of at least \$100,000 to execute and deliver to the City a compliance certificate in the form attached hereto as **Exhibit H**.

- viii. With regard to the construction of the Public Improvements, the Owner shall hire contractors and subcontractors who pay appropriate wages, properly classify employees, obey labor laws, participate (where applicable) in formal apprenticeship training programs, and provide employer funded health and retirement benefits, with the understanding that it is the Parties' intent that the foregoing shall not be understood to preclude the Owner from engaging any qualified contractor or construction manager to construct the Revised Project. To evidence its compliance with this provision, annually throughout the construction of the Revised Project Owner shall require contractors and subcontractors who are then working on the Revised Project and who perform work or are expected to perform work with a value of at least \$100,000 to execute and deliver to the City a compliance certificate in the form attached hereto as **Exhibit H**.
- ix. Owner shall solicit and review proposals from community job training programs, such as Youth Build Vermont and Vermont Works for Women, to participate in the construction of portions of the Revised Project, provided that Owner shall not be required to utilize any such programs.

c. **Construction Management and Coordination.**

- i. Owner and the City agree to work together in good faith to provide timely communications and other information concerning Revised Project construction, such as potential disruptions to current mall tenants and neighboring property owners affected by the construction of the Revised Project and to take such steps to mitigate potential construction impacts on such parties that can reasonably be expected to be effective, all as more particularly discussed in this Section 5(c); provided that nothing required herein shall alter or delay the timeline or the construction schedule for the Revised Project.
- ii. The Parties acknowledge that the City has adopted certain standard operating procedures for the issuance of a Construction Encumbrance Permit in connection with construction projects that will impact municipal assets such as streets and sidewalks, and that the issuance of a Construction Encumbrance Permit allows for the temporary closure of public streets and sidewalks to facilitate construction. Owner acknowledges that this process includes the provision of a Traffic Management Plan and a Traffic Control Plan, which must be submitted to DPW for its review and for approval by the City Council

prior to DPW's issuance of a Construction Encumbrance Permit.

- iii. Owner shall cause its general contractor or construction manager to meet with appropriate DPW personnel prior to commencing construction of the Revised Project to discuss Owner's intended construction process, project phasing and means and methods of construction so that the Parties can work together to facilitate construction in a manner that will minimize disruption to the area surrounding the Property.
- iv. Prior to Commencing Construction of the Revised Project, Owner shall perform a pre-construction physical survey of all buildings, sidewalks, curbs and streets that could be impacted by construction of the Revised Project to determine their existing physical condition.
- v. Before Commencing Construction of the Revised Project, Owner, Owner's general contractor and the City shall jointly hold at least two meetings with members of the business community in the vicinity of the BTC Property for the purpose of describing construction phasing and timing, and listening to community concerns with regard to the impact of Revised Project construction, in an effort to reasonably mitigate construct impacts on the surrounding business community.
- vi. Owner, or its general contractor, shall establish and operate a hotline (both telephone and web-based) for use by the surrounding business community to quickly and reliably submit information to the general contractor and project superintendent. The hotline contact information (i.e., telephone number and website address) shall be publicized on signs posted in and around the construction zone. Owner shall maintain and share with the City upon written request a detailed log of calls received from concerned stakeholders that shall include the description of the issue and how the issue was addressed.
- vii. The City, acting through CEDO, shall work with Owner to coordinate the delivery of the following services:
 - 1. Timely communication with businesses about construction impacts, construction schedules and traffic patterns, including signage related thereto.
 - 2. Timely communication with businesses about the availability of parking and/or shuttle services.
 - 3. The telephone and website hotlines described above.
 - 4. Contact information for a City communications manager or community liaison with whom Owner will coordinate the delivery of the services.
 - 5. Contact information for an Owner communications manager or program liaison with whom CEDO will coordinate the delivery of the services.
 - 6. As a component of the Parties' community outreach efforts in connection with the Revised Project, the Owner will install, in cooperation with the

City and Church Street Marketplace, signage and graphics placed on the Revised Project's temporary barrier fencing to depict and describe the Revised Project and its attributes, to communicate that downtown merchants are open for business during construction of the Revised Project, and to engage the community.

d. Payment to CEDO. The Parties acknowledge that Owner has paid CEDO the sum of One Hundred Thousand Dollars (\$100,000.00), for use by CEDO to assist businesses in the vicinity of the Revised Project during construction, to support community outreach associated with the Revised Project and to support workforce training efforts associated with the Revised Project.

e. Parking During Construction. Owner acknowledges that approximately 300 parking spaces in the former garage on the BTC Property were leased to third parties at the time Owner demolished the garage. The Parties acknowledge that the City has offered 300 parking spaces within municipal parking lots and structures to people holding parking space leases with Owner on a first come, first served basis, subject to availability. The City makes no representation as to the continued availability of such parking spaces, and Owner acknowledges that, as between Owner and the City, Owner has the sole obligation, to the extent such an obligation exists, to secure replacements for such parking spaces. The City has also assisted Owner to identify parking resources in Burlington and South Burlington that may be available for lease. As a component of its Traffic Management Plan, Owner shall lease off-site parking spaces for its contractors and their employees and establish a shuttle service between such off-site parking spaces and the BTC Property.

f. Owner agrees to keep open and available to the public, and in a good state of maintenance, repair and cleanliness, the existing, public restrooms located in the portion of Owner's property bounded by Church St., Cherry St., Bank St., and St. Paul St. until such time as (i) the area that encompasses the restrooms is leased to a third-party tenant or (ii) such property ceases to operate as a shopping mall, at which time Owner's obligation under this paragraph shall cease, provided that owner may temporarily close such restrooms to accommodate any necessary renovation and/or reconstruction.

g. The Parties agree to execute, acknowledge, if necessary, and deliver such documents, certificates or other instruments and take such other actions as may be reasonably required from time to time to carry out the intents and purposes of this Agreement.

6. Assignment; Financing Matters. This Agreement shall be assignable by Owner to a transferee of the BTC Property in connection with the sale or transfer of the BTC Property, provided that the transferee shall be bound by the obligations hereunder. The Parties agree that this Agreement is intended to and shall run with the BTC Property and the City Property, and shall bind and inure to the benefit of each of the Owner and the City and their respective successors in title and assigns. In the event of any conveyance or divestiture of title to the BTC Property, the grantor or the person(s), corporation(s) or other entity or entities that are divested of title shall be relieved of all covenants and obligations thereafter accruing hereunder with respect to the Owner. In the event of any conveyance or divestiture of title to the BTC Property, the grantee or the person(s), corporation(s), or other entity or entities who otherwise succeed to title shall be deemed to have assumed all of the covenants and obligations of the Owner thereafter accruing hereunder with respect to the BTC

Property until such grantee or successor is relieved therefrom pursuant to previous sentence. This Agreement shall otherwise not be assigned by either party without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, the Owner shall be entitled to collaterally assign this Agreement, and its rights hereunder, to any of its lender(s) and other financing parties without the City's consent, and such lender(s) and other financing parties shall have the right to assign this Agreement to a successor owner in connection with their enforcement of their collateral rights in this Agreement. The City shall execute documentation to evidence and agree to such collateral assignment as may reasonably be requested by such lender(s) or other financing parties in connection with such collateral assignment. The City acknowledges that Owner's lender(s) and other financing parties are likely to hold a mortgage of the BTC Property and to hold other security interests with respect to the Revised Project and the BTC Property. For avoidance of doubt, Owner's members may in their sole discretion freely assign any or all of their equity interests in Owner to a third party without the consent of the City.

7. Events of Force Majeure. As used in this Agreement, an "Event of Force Majeure" means a delay in performance, other than (a) resulting from an obligation requiring the payment of a sum of money, (b) affecting compliance with any time period imposed by statute, or (c) resulting from a financing delay greater than ninety (90) days, if and so long as such delay shall be directly caused by (x) fire or other similar unavoidable casualty, national emergency, governmental or municipal stop work orders, pandemics, epidemics, enemy action, civil commotion, acts of God, or other causes beyond the delaying Party's reasonable control, or (y) strikes, lockouts, or inability to obtain labor preemptions that do not exceed sixty (60) days in the aggregate, and in any event provided, however, that within ten (10) days of a Party's receipt of notice from the other Party referring to a delay in performance, such delaying Party shall notify the other Party in writing of the existence and nature of the claimed Event of Force Majeure. Thereafter, the delaying Party shall from time to time and within ten (10) days of any written request, keep the other Party fully informed, in writing, of all further developments concerning such Event of Force Majeure and the efforts, if any, being made by the delaying Party to perform. Further, the delaying Party shall use commercially reasonable efforts to mitigate any adverse impacts and/or find another manner of performing as soon as reasonably practicable. Notwithstanding the foregoing, an Event of Force Majeure shall not (i) extend the Outside Commencement Deadline, (ii) extend the timing for commencing construction of the sidewalk portion of the Public Improvements along the St. Paul Street frontage of the South Tower as set forth in Section 1(h)(iii), (iii) extend the Owner's obligation to timely satisfy the conditions set forth in Section 4(c)(ii)(A) – (H), and/or (iv) otherwise affect any provision of this Agreement that expressly excludes Events of Force Majeure from its effect.

8. Governing Law; Venue. This Agreement shall be governed and construed in accordance with the laws of the State of Vermont, without regard to its conflicts of law rules. The Parties consent to and submit to in personam jurisdiction and venue in the State of Vermont, County of Chittenden, and in the U.S. District Court for the District of Vermont. The Parties assert that they have purposefully availed themselves of the benefits of the laws of the State of Vermont and waive any objection to in personam jurisdiction on the grounds of minimum contacts, waive any objection to venue, and waive any plea of forum non conveniens. This consent to and submission to jurisdiction is with regard to any action related to this Agreement, regardless of whether the Parties' actions took place in the State or elsewhere in the United States.

9. Right to Enjoin. Each party agrees that the other party will not have an adequate remedy at law for such party's noncompliance with the provisions of this Agreement and, therefore, the nonbreaching party shall have the right to equitable remedies, including injunctive relief and specific performance, to enforce the performance by the breaching party of its obligations under this Agreement.

10. Attorneys' Fees. If any Party hereto shall bring any suit or action against another for relief, declaratory or otherwise, arising out of this Agreement, the prevailing party shall have and recover against the non-prevailing party, in addition to all court costs and disbursements, such sum as the applicable court may adjudge to be reasonable attorneys' fees.

11. Severability. If any term, covenant or condition contained in this Agreement is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect any other term, covenant or condition herein contained, provided that such invalidity does not materially prejudice any Party in their respective rights and obligations contained in the valid terms, covenants or conditions hereof, and the Parties shall cooperate to modify this Agreement to cause it to conform to the original language of this Agreement to the extent consistent with the finding of the court.

12. Construction; Headings. The Parties waive the benefit of any rule that this Agreement is to be construed against one Party or the other. The headings in this Agreement are for the purposes of reference only and shall not limit or otherwise affect the meaning hereof. The locative adverbs, "therein," "hereunder," "hereto," "hereby," "hereinafter" and like words, wherever the same appear in this Agreement, mean and refer to this Agreement in its entirety and not to any specific Section or Subsection hereof, unless expressly otherwise provided. The following words and phrases shall be construed as follows: (i) "at any time" shall be construed as "at any time or from time to time;" (ii) "any" shall be construed as "any and all;" (iii) "including" shall be construed as "including but not limited to;" (iv) "will" and "shall" shall each be construed as mandatory. Except as otherwise specifically indicated, all references to Section and Subsection numbers or letters shall refer to Sections and Subsections of this Agreement, and all references to exhibits refer to the exhibits attached to this Agreement. Whenever require by the context, the singular shall include the plural, and vice versa.

13. Business Day. As used in this Agreement, the term "business day" means any Monday through Friday on which commercial banks are authorized to do business and are not required by law or executive order to close in the State of Vermont. In the event the date for performance of any obligation or the exercise of any right under this Agreement falls on other than a business day, then such obligation shall be performed and such right may be exercised on the next succeeding business day.

14. Integration; Modification. This Agreement, including the background recitals and together with the exhibits referenced herein and/or attached hereto and all other agreements referenced herein, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any prior agreements or representations, oral or written, on the same subject. This Agreement can be modified only by written agreement executed by authorized representatives of each Party.

15. No Partnership. The Parties do not intend by this Agreement to create, nor shall this Agreement be deemed to create, a partnership or a joint venture among the Parties; each Party is an independent actor and entity, and nothing in this Agreement shall be deemed to make either Party an agent or partner of the other, or to give either Party the right to bind the other in any way, notwithstanding any reference to the Revised Project as a “public-private partnership.”

16. Waiver. The failure of either Party to insist on strict performance of any of the provisions of this Agreement or to exercise any right it grants will not be construed as a relinquishment of any right or a waiver of any provision of this Agreement. No waiver of any provision or right shall be valid unless it is in writing and signed by a duly authorized representative of the Party granting the waiver.

17. Incorporation by Reference. The content of the Background section to this Agreement, including without limitation the definitions set forth therein, and all exhibits hereto and the terms contained therein and the contents thereof, are incorporated into this Agreement by reference.

18. Authority. Each of the Parties warrants to the other that the person or persons executing this Agreement on behalf of such Party has the full right, power and authority to enter into and execute this Agreement on such Party's behalf and to thereby bind the Party on whose behalf such person, and that no consent from any other person or entity is necessary as a condition precedent to the legal effect of this Agreement except as provided herein.

19. Notices. Notices and other communications required or permitted under this Agreement shall be in writing and delivered by hand against receipt, or shall be sent (i) by recognized overnight delivery service, (ii) by certified or registered mail, postage prepaid, with return receipt requested, or (iii) by email, provided that such email notes in both the subject line and body of the email that it is an official notice being sent under this Agreement, and is immediately followed by notice under either Subsection (i) or (ii) above. All notices shall be addressed as follows:

If to the City: City of Burlington
City Hall
149 Church St.
Burlington, VT 05401
Attention: Mayor Miro Weinberger
Email: miro@burlingtonvt.gov

With a copy to: City Attorney
City Hall
149 Church St.
Burlington, VT 05401
Email: eblackwood@burlingtonvt.gov

If to Owner: BTC Mall Associates LLC
101 Cherry Street, Suite 440
Burlington, Vermont, 05401
Attention: Donald Sinex

Email: dsinex@devonwoodinvestors.com

With a copy to: Brian Dunkiel, Esq.
Dunkiel Saunders
91 College Street, P.O. Box 545
Burlington, Vermont 05402-0545
Email: bdunkiel@dunkielsaunders.com

or to such other addresses as may be designated by a proper notice. Notices shall be deemed to be effective upon receipt (or refusal thereof) if personally delivered, sent by recognized overnight delivery service, or sent by certified or registered mail, postage prepaid, with return receipt requested; or upon receipt if such delivery is by email (as evidenced by email confirmation, provided that if such notice cannot be transmitted because of a problem affecting the receiving party's computer, the deadline for receiving such notice shall be extended through the next business day, and if email confirmation indicates that it was sent after 5:00 p.m. (local time) on such day it shall be deemed to have been given on the succeeding business day.

20. Designated Representatives. Each Party shall designate one or more representatives to serve as the primary contact for communications relating to and issues arising under this Agreement. The City's designated representative is the Director of CEDO. BTC's designated representative is Donald F. Sinex. In the event that either Party changes its designated representative(s), it shall notify the other Party of the successor designated representative in accordance with Section 19.

21. Reporting Requirements. In the event that the Owner fails to timely file a report hereunder, the City shall provide the Owner written notice of such missing report(s) and Owner shall file such report(s) with the City within thirty (30) days of receipt of such notice. Any reporting obligations hereunder shall automatically terminate and shall cease to be of any further effect upon Completion of the Revised Project, other than reporting obligations with respect to periods prior to Completion of the Revised Project.

22. Term. Notwithstanding any other provision in this Agreement, this Agreement shall expire and be of no further force and effect on the date which is the later of (a) six (6) months after Completion of all Phases of the Revised Project, or (b) six (6) months after the City has delivered to Owner written acceptance of the Public Improvements, provided that any and all terms, warranties, conditions and provisions of this Agreement which are not fully performed or discharged as of any termination of this Agreement shall survive such termination and remain in full force and effect thereafter.

23. Amendment and Restatement. This Agreement amends and restates the Original Development Agreement in its entirety.

24. Memorandum of Agreement. This Agreement shall not be recorded; provided that the Parties shall record a memorandum of this Agreement in form attached as **Exhibit K** hereto, including the consent of any existing lenders or mortgagees. Upon the expiration or sooner termination of this Agreement, the Owner and the City shall, upon written request by the other, execute and acknowledge, in recordable form, a release of the memorandum of this Agreement.

25. Counterparts. This Agreement may be executed in any number of counterparts, any or all of which may contain the signatures of less than all the Parties, and all of which shall be construed together as but a single instrument and shall be binding on the Parties as though one originally executed document. Signatures to this Agreement transmitted by electronic means shall be valid and effective to bind the Party so signing.

Signature Page to Follow

IN WITNESS WHEREOF, this Agreement is executed by the duly authorized officers or representatives of the Parties as of the Effective Date.

BTC MALL ASSOCIATES LLC

By: RD Burlington Associates LLC, Its Sole Member
By: Devonwood City Place Investors, LLC, Its
Managing Member

By: _____
Name: Donald F. Sinex
Title: Managing Member

STATE OF _____
_____ COUNTY, SS.

At _____, in said County and State, this ____ day of February, 2021 personally appeared Donald F. Sinex, to me known, being the Managing Member of Devonwood City Place Investors, LLC, being the Managing Member of RD Burlington Associates LLC, being the sole Member of BTC Mall Associates LLC, and he acknowledged this instrument, by him signed, to be his free act and deed individually and on behalf of the entities on which he acted.

Before me _____
Notary Public
Commission Expires:
Commission Number:

CITY OF BURLINGTON

By: _____
Name: Miro Weinberger
Title: Mayor

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

At Burlington, in said County and State, this ____ day of February, 2021 personally appeared Miro Weinberger, to me known, being the Mayor of the City of Burlington, and he acknowledged this instrument, by him signed, to be his free act and deed and the free act and deed of the City of Burlington.

Before me _____
Notary Public
Commission Expires:
Commission Number:

LIST OF EXHIBITS

Exhibits

A	100% Design Plans and Specifications for Public Improvements
B-1	Revised Project Schedule
B-2	Revised Project Phases
C	MPI Construction Contract
D	Advanced Preliminary Budget
E	Form of Agreement Memorializing the Terms of Section 4(e)
F	Form of Stormwater Memorandum of Understanding
G	Right of First Offer
H	Form of Labor Compliance Certificate
I	Reserved
J	Final Design and Specifications Sheet
K	Form of Memorandum of Agreement

Exhibit A

Schedule of 100% Design Plans and Specifications for Public Improvements

[to be attached upon Release from Escrow]

Exhibit B-1

Revised Project Schedule

Phase: First of Northwest Tower or Northeast Tower
Outside start date: 9-30-2022
Outside finish date: 7-01-2024

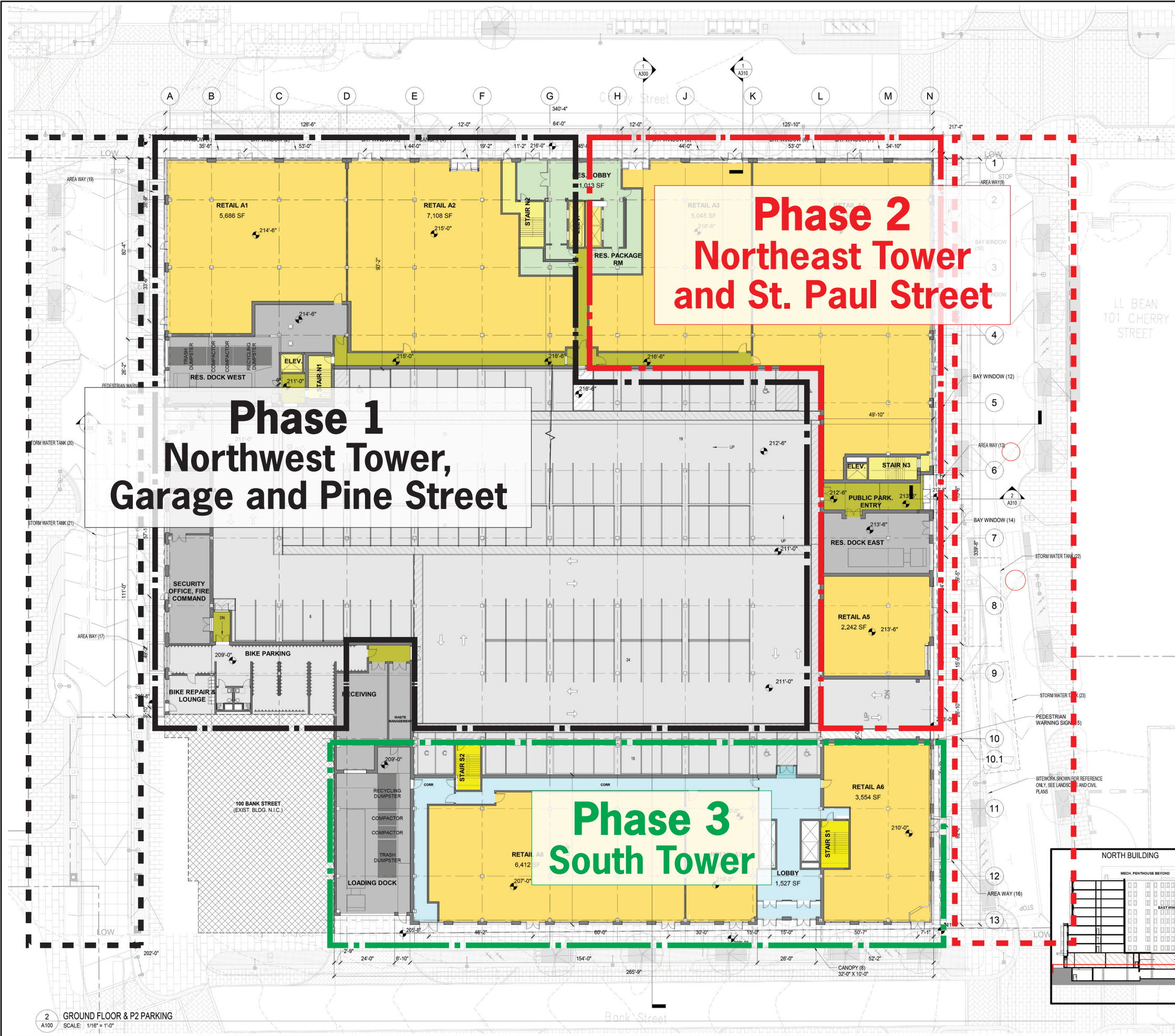
Phase: Second of Northwest Tower or Northeast Tower
Outside start date: 9-30-2023
Outside finish date: 7-01-2025

Phase: South Tower
Outside start date: 9-30-2023
Outside finish date: 7-01-2025

Exhibit B-2

Depiction of Revised Project Phases

Attached



FLOOR PLAN GENERAL NOTES

ALSO SEE SYMBOL LEGEND ON COVER SHEET.

1. DIMENSIONS: ALL INTERIOR DIMENSIONS ARE TO FACE OF GIBB OR TILE FINISH UNLESS OTHERWISE NOTED. EXTERIOR DIMENSIONS ARE TO NOMINAL CORNER OF MASONRY UNLESS NOTED OTHERWISE.

2. PLANS ARE TO BE VIEWED IN CONJUNCTION WITH CIVIL, LANDSCAPE, STRUCTURAL, MEPFP AND ALL OTHER TRADES, AS APPROPRIATE. DISCREPANCIES ARE TO BE BROUGHT TO THE ARCHITECT'S ATTENTION FOR RESOLUTION BEFORE COMMENCING WORK.

3. ALL NON-ARCHITECTURAL INFORMATION SHOWN HERE IS FOR REFERENCE ONLY.

4. REFER TO CIVIL PLANS FOR LIMIT OF WORK.

FLOOR PLAN LEGEND

NEW WALL

NEW STEEL/CONCRETE COLUMN - SEE STRUCTURAL

FINISH FLOOR ELEVATION

OCCUPANCY & USE LEGEND

PARKING

MEP/BUILDING SUPPORT

RESIDENTIAL - STORAGE

RES. LOBBY & AMENITY

RETAIL

NORTH BUILDING

CIRCULATION

ELEVATORS & STAIRS

RETAIL

SOUTH BUILDING

CIRCULATION

ELEVATORS & STAIRS

OFFICE/CO-WORKING

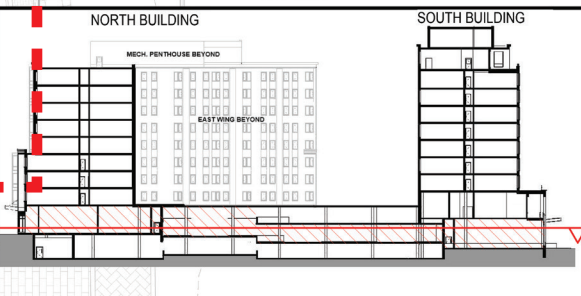
COMMUNITY SPACE

MEETING, MTG SUPPORT

THIS LEVEL P2: 109 STRIPPED
TOTAL 422 STRIPPED

ENCUMBRANCES SCHEDULE					
#	TYPE	LOCATION	DIMENSIONS (LxW)	HT ABOVE SIDEWALK	NOTES
1	BAY WINDOW	CHERRY ST	10'-8" X 3'-5.5"	19'-6"	
2	BAY WINDOW	CHERRY ST	10'-8" X 3'-5.5"	19'-2"	
3	BAY WINDOW	CHERRY ST	10'-8" X 3'-5.5"	18'-10"	
4	CANOPY	CHERRY ST	14'		
5	BAY WINDOW	CHERRY ST	10'-8" X 3'-5.5"	17'-5"	
6	BAY WINDOW	CHERRY ST	10'-8" X 3'-5.5"	16'-8"	
7	BAY WINDOW	CHERRY ST	10'-8" X 3'-5.5"	16'-0"	
8	CANOPY	BANK ST	32' X 10'	15'-7"	
9	AREAWAY	ST PAUL ST	10'-0" X 7'-7"		
10	BAY WINDOW	ST PAUL ST	10'-8" X 3'-5.5"	16'-4"	
11	BAY WINDOW	ST PAUL ST	10'-8" X 3'-5.5"	17'-0"	
12	BAY WINDOW	ST PAUL ST	10'-8" X 3'-5.5"	19'-0"	
13	AREAWAY	ST PAUL ST	17'-5" X 4'-0"		
14	BAY WINDOW	ST PAUL ST	10'-8" X 3'-5.5"	30'-10"	
15	WARNING SIGN	ST PAUL ST	N/A		within property line
16	AREAWAY	ST PAUL ST	20'-0" X 6'-0"		
17	AREAWAY	PINE ST	14' X 7'-8"		
18	WARNING SIGN	PINE ST	1'-6" X 1'-4"	8'-0"	
19	AREAWAY	PINE ST	10'-0" X 7'-8"		
20	STORM WATER TANK	PINE ST	36' X 18'		below road & furnishings zone
21	STORM WATER TANK	PINE ST	41' X 18'		below road
22	STORM WATER TANK	ST PAUL ST	39' X 16'		below road & furnishings zone
23	STORM WATER TANK	ST PAUL ST	48' X 16'		below road

NOTE: "WIDTH" IN ENCUMBRANCE DIMENSIONS ABOVE FOR ITEMS 1-19 INDICATES PROJECTION FROM THE PRIMARY BUILDING FACE. IN ALL CASES, THE R.O.W. ENCUMBRANCE WILL BE LESS THAN THIS DIMENSION ON PINE AND CHERRY STREETS. THE PRIMARY FACE IS 4' FROM THE PROPERTY LINE. ON BANK AND ST PAUL STREETS THE PROPERTY LINES ARE NOT PARALLEL TO THE BUILDING AND THE PRIMARY FACE WILL BE BETWEEN 4' AND 42' FROM THE PROPERTY LINE.



freeman french freeman
11 Main Street - Burlington VT 05401
802-664-6864 • www.ffc.com
Architectural • Planning • Interiors

ENGINEERING VENTURES P
31 Church St, Suite 320
Burlington, VT 05401 | 802.663.8098
www.segroup.com
Landscape Architecture / Civil Engineering

SE GROUP
31 Church St, Suite 320
Burlington, VT 05401 | 802.663.8098
www.segroup.com
Landscape Architecture / Civil Engineering

CITYPLACE BURLINGTON

ZONING SUBMISSION - NOT FOR CONSTRUCTION

OWNER
BTC MALL ASSOCIATES, LLC

A PROJECT BY
DEVONWOOD INVESTORS, LLC
DOUGLAS HANNAH, MANAGING DIRECTOR

PROJECT NO.
A1947.00

CONSULTANT PROJ. NO.
10/15/2020

SCALE
1/16" = 1'-0"

DESIGNED BY
JDR

CHECKED BY
JDR/JB

DATE
15 Oct 2020

REVISION
Rev. 2 15 Jan 2021

OVERALL PLAN-GROUND FLOOR AND P2 PARKING

SHEET NO.
A100

© 2020 Freeman French Freeman Inc.

Exhibit C

MPI Construction Contract

Attached

AGREEMENT made as of the [] day of [] in the year 20[]

BETWEEN the Owner:

(Name, legal status, address and other information)

BTC Mall Associates, LLC, a Delaware limited liability company
101 Cherry Street, Suite 440
Burlington, Vermont 05701

and the Contractor:

(Name, legal status, address and other information)

SD Ireland
Attention: Scott Ireland
193 Industrial Avenue
Williston, VT

and the Contract Beneficiary: The City of Burlington, Vermont

City of Burlington
Attention: City Attorney
City Hall
149 Church Street
Burlington, Vermont 05401

for the following Project:

(Name, location and detailed description)

Construction of below-grade improvements, plus at-grade road and concrete sidewalks, on new segments of Pine Street and St. Paul Street between Bank Street and Cherry Street, in accordance with the final construction drawings attached to this Agreement (the "MPI Plans and Specs"), including any amendment or Change Order approved by the parties and the Beneficiary. The Project scope and Work may include alternatives, as directed by the Beneficiary, and at the Beneficiary's cost, for offsite improvements required in connection with the Beneficiary's payment to acquire rights from the owners of 100 Bank Street, 150 Bank Street, and 77 Bank Street.

The Engineer:

(Name, legal status, address and other information)

Engineering Ventures
208 Flynn Ave
Burlington, VT 05401

The Owner, Contractor and Beneficiary agree as follows.

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ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract, if any, Drawings, Specifications, and any other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 16.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others. Upon completion in accordance with the terms hereof, the Work shall be delivered free and clear of all liens.

ARTICLE 3 RELATIONSHIP OF THE PARTIES

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner and Beneficiary to cooperate with the Engineer and exercise the Contractor's skill and judgment in furthering the interests of the Owner and Beneficiary; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's and Beneficiary's interests and in accordance with applicable laws and to a standard commensurate with Class A commercial development projects. The Owner, and only to the extent it relates to a Change Order or alternative proposed by the Beneficiary, the Beneficiary agrees to furnish and

approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

The Beneficiary is owner of the property on which the Work is to be performed and will be the owner of the Work upon delivery. The Owner and Contractor are entering into this Agreement for good and valuable consideration, the sufficiency of which Owner and Contractor hereby acknowledge, pursuant to their obligations set forth in connection with that certain Escrow Agreement by and between the Beneficiary and the Owner, dated as of even date herewith (the "Escrow Agreement").

Contractor acknowledges and agrees that: (i) it is the "Contractor" as defined in the Escrow Agreement, (ii) the terms and conditions of the Escrow Agreement that are applicable to the Contractor are hereby incorporated herein by reference as if fully set forth herein, and (iii) Contractor is bound by the terms and conditions of the Escrow Agreement that are applicable to the Contractor.

This Agreement may not be assigned by Owner or Contractor without the prior written consent of the Beneficiary, which consent Beneficiary may grant or withhold in its sole discretion.

ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 4.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

☐ [« »] The date of this Agreement.

☒ [«X»] A date set forth in a notice to proceed issued by the Beneficiary pursuant to and in accordance with the terms of the Escrow Agreement. Beneficiary's notice to proceed may limit the scope of the Work to be performed under this Agreement to reflect Owner's actual construction of certain Public Improvements (as defined in and pursuant to Owner's obligations set forth in connection with the Escrow Agreement), if any, as of the date of the Notice to Proceed.

§ 4.2 The Contract Time shall be measured from the date of commencement of the Work.

§ 4.3 Substantial Completion

§ 4.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

(Check one of the following boxes and complete the necessary information.)

☒ [«X»] Not later than 180 calendar days from the date of commencement of the Work.

§ 4.3.2 Intentionally deleted

§ 4.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 4.3, liquidated damages, if any, shall be assessed as set forth in Section 5.1.6.

ARTICLE 5 CONTRACT SUM

§ 5.1 The Owner alone shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Contractor's Fee, but excludes any costs arising out of any Change Orders proposed by the Beneficiary or any alternatives directed by the Beneficiary. The City of Burlington, as the Beneficiary under this Contract, shall bear no obligation or responsibility to pay the Contractor for the Contract Sum or any portion thereof, but the Contractor shall nonetheless be fully obligated to complete the improvements pursuant to this Contract regardless of the status of payment of the Contract Sum. Contractor agrees to look solely to Owner (and not the Beneficiary) for payment for the Work.

Notwithstanding the foregoing, the Beneficiary shall bear the costs related to, and shall directly pay the Contractor for, any Change Orders directed by the Beneficiary or any alternatives directed by the Beneficiary, as permitted under the Project scope. Each such Change Order or alternative directed by the Beneficiary shall provide for payment by the Beneficiary to the Contractor, and specific payment terms relating thereto.

§ 5.1.1 The Contractor's Fee:

(State a lump sum, percentage of Cost of the Work, or other provision for determining the Contractor's Fee.)

5% of the cost of the Work (excluding any costs arising out of any Change Orders proposed by the Beneficiary or any alternatives directed by the Beneficiary)

§ 5.1.2 The method of adjustment of the Contractor's Fee for changes in the Work:

5% of the amount of any approved Change Order proposed or ordered by Owner.

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work: No payment for any other matter except the 5% fee specified above in 5.1.1 and 5.1.2. shall be due and payable by Owner to the Contractor under this Contract.

« »

§ 5.1.4 Rental rates for Contractor-owned equipment shall not exceed the standard rental rate paid at the place of the Project.

§ 5.1.5 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

The Beneficiary shall be entitled to liquidated damages if the Project is not timely completed as stated in this Contract in the amount of five hundred dollars (\$500.00) per day, subject to the provisions of Section 14.2. No other damages shall be paid to nor shall the Beneficiary be entitled to any other damages for a late delivery by the Contractor.

§ 5.2 Cost to be Paid by Owner.

§ 5.2.1 The Contract Sum (Cost of the Work plus the Contractor Fee) is not guaranteed by the Contractor, Owner shall pay Contractor all Costs as defined in this Agreement that the Contractor incurs in completing the Work hereunder, excluding only any Costs arising out any Change Orders proposed by the Beneficiary or any alternatives directed by the Beneficiary. And Cost shall include and be adjusted for additions and deductions by Change Order (other than those proposed by the Beneficiary) as provided in the Contract Documents. The Cost as defined in this section is referred to in the Contract Documents as the amount to be paid by the Owner to the Contractor for completion of the Work, excluding any costs arising out any Change Orders proposed by the Beneficiary or any alternatives directed by the Beneficiary. As set forth in Section 5.1, the Beneficiary shall directly pay the Contractor for any costs arising out any Change Orders proposed by the Beneficiary or any alternatives directed by the Beneficiary, and any such Change Order or alternative directed by the Beneficiary shall provide the specific payment terms relating thereto.

§ 5.2.2 To the extent that the Contract Documents are anticipated to require further development, the Contract Sum includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 Adjustments to the Contract Sum on account of changes in the Work may be determined by any of the methods listed in Article 7 of AIA Document A201™–2017, General Conditions of the Contract for Construction.

§ 6.2 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to “cost” and “fee,” and not by Articles 5, 7 and 8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3 In calculating adjustments to the Contract Sum, the terms “cost” and “costs” as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term “fee” shall mean the Contractor's Fee as defined in Section 5.1.1 of this Agreement.

§ 6.4 Intentionally deleted

ARTICLE 7 COSTS TO BE REIMBURSED

§ 7.1 Cost of the Work

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work, excluding any costs arising out of any Change Orders proposed by the Beneficiary or any alternatives directed by the Beneficiary. The Cost of the Work shall include only the items set forth in this Article 7.

§ 7.1.2 Where, pursuant to the Contract Documents (including any Change Order or alternative proposed or directed by the Beneficiary), any cost is subject to the Owner's or the Beneficiary's prior approval, the Contractor shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard paid at the place of the Project, except with prior approval of the Owner or, with respect to costs to be borne by the Beneficiary hereunder, the prior written approval of the Beneficiary.

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 7.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

§ 7.2.2.1 Wages or salaries of the Contractor's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

<< >>

§ 7.2.3 Wages or salaries of the Contractor's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.4 Costs paid or incurred by the Contractor, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments, and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.3 Subcontract Costs

Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Contractor shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Contractor, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of the Contractor's site office, including general office equipment and supplies.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Contractor, with the Owner's prior approval.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Contractor is liable.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Contractor is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Contractor resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Contractor had reason to believe that the required design, process or product was an infringement of a copyright or a patent, and the Contractor failed to promptly furnish such information to the Engineer as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements, shall not be included in the Cost of the Work used to calculate the Contractor's Fee.

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

§ 7.6.8 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 7.6.9 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 7.6.10 Expenses incurred in accordance with the Contractor's standard written personnel policy for relocation and temporary living allowances of the Contractor's personnel required for the Work, with the Owner's prior approval.

§ 7.6.11 That portion of the reasonable expenses of the Contractor's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201-2017.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Contractor, and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors, suppliers, or others.

§ 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Contractor; (2) any entity in which any stockholder in, or management employee of, the Contractor holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Contractor; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Contractor.

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 10. If the Owner fails to authorize the transaction in writing, the Contractor shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 10.

ARTICLE 8 COSTS NOT INCLUDED IN COST OF WORK

§ 8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 15;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Contractor's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Article 7;
- .5 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Contractor, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Article 7; and

- .8 Costs arising out of any Change Orders proposed by the Beneficiary or any alternatives directed by the Beneficiary, which shall be paid for directly by the Beneficiary to the Contractor in accordance with the applicable Change Order or alternative.

ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

§ 9.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be obtained.

§ 9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 9.3 The Beneficiary shall have the rights of the Owner under this Article 9 with respect to any Beneficiary directed Change Orders.

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

§ 10.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or other appropriate agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Contractor shall deliver such bids to the Engineer and Owner with an indication as to which bids the Contractor intends to accept. The Owner then has the right to review the Contractor's list of proposed subcontractors and suppliers in consultation with the Engineer and, subject to Section 10.1.1, to object to any subcontractor or supplier. Any advice of the Engineer, or approval or objection by the Owner, shall not relieve the Contractor of its responsibility to perform the Work in accordance with the Contract Documents. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

§ 10.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Contractor may require that a Change Order be issued to adjust the Contract Sum by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 10.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Contractor shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Contractor in Article 11.

§ 10.3 The Beneficiary shall have the rights of the Owner under this Article 10 with respect to any Beneficiary directed Change Orders.

ARTICLE 11 ACCOUNTING RECORDS

The Contractor shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner and the Beneficiary with respect to any Beneficiary directed Change Orders. The Owner and the Owner's auditors, and with respect to any Beneficiary directed Change Orders, the Beneficiary and the Beneficiary's auditors, shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Contractor shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 12 PAYMENTS

§ 12.1 Progress Payments

§ 12.1.1 Based upon Applications for Payment submitted to the Engineer by the Contractor, and Certificates for Payment issued by the Engineer, the Owner shall make progress payments on account of the Contract Sum to the Contractor, as provided below and elsewhere in the Contract Documents.

§ 12.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

« »

§ 12.1.3 Provided that an Application for Payment is received by the Engineer not later than the « » day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the « » day of the « » month. If an Application for Payment is received by the Engineer after the application date fixed above, payment of the amount certified shall be made by the Owner not later than « » (« ») days after the Engineer receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 12.1.4 With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Engineer to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

§ 12.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Contract Sum but not otherwise allocated to another line item or included in a Change Order; and (3) the Contractor's Fee.

§ 12.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Engineer may require. The schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 12.1.5.2 Intentionally deleted

§ 12.1.5.3 When the Contractor allocates costs from a contingency to another line item in the schedule of values, the Contractor shall submit supporting documentation to the Engineer.

§ 12.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the percentage of that portion of the Work which has actually been completed.

§ 12.1.7 In accordance with AIA Document A201-2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 12.1.7.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner (or the Beneficiary with respect to any Beneficiary directed Change Orders), suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Engineer determines, in the Engineer's professional judgment, to be reasonably justified; and
- .4 The Contractor's Fee, computed upon the Cost of the Work described in the preceding Sections 12.1.7.1.1 and 12.1.7.1.2 at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a

fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 12.1.7.1.1 and 12.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 12.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner (or the Beneficiary with respect to any Beneficiary directed Change Orders);
- .2 The amount, if any, for Work that remains uncorrected and for which the Engineer has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Engineer may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner’s auditors (or the Beneficiary’s auditors with respect to any Beneficiary directed Change Orders) in such documentation; and
- .6 Retainage withheld pursuant to Section 12.1.8.

§ 12.1.8 Retainage

« »

§ 12.1.8.1. For each progress payment made toward a Beneficiary directed Change Order prior to Substantial Completion, the Beneficiary may withhold the following amount, as retainage, from the payment otherwise due: 10%

§ 12.1.8.2 Upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes any retainage withheld from Prior Applications for Payment.

§ 12.1.9 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 12.1.10 Except with the Owner’s prior written approval, or in the case of Change Orders directed by the Beneficiary or alternatives directed by the Beneficiary under the Project Scope, the Beneficiary’s prior written approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

§ 12.1.11 The Owner and the Contractor, or in the case of Change Orders directed by the Beneficiary or alternatives directed by the Beneficiary under the Project Scope, the Beneficiary and the Contractor, shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

§ 12.1.12 In taking action on the Contractor’s Applications for Payment the Engineer shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor, and such action shall not be deemed to be a representation that (1) the Engineer has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 12.1.4 or other supporting data; (2) that the Engineer has made exhaustive or continuous on-site inspections; or (3) that the Engineer has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner’s auditors acting in the sole interest of the Owner. Such examinations, audits, and verifications, if required by the Beneficiary, will be performed by the Beneficiary’s auditors acting in the sole interest of the Beneficiary.

§ 12.2 Final Payment

§ 12.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract, except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Engineer in accordance with Section 12.2.2.

§ 12.2.2 Within 30 days of the Owner's receipt of the Contractor's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Engineer that it will not conduct an audit. Within 30 days of the Beneficiary's receipt of the Contractor's final accounting for the Cost of the Work applicable to any Beneficiary directed Change Orders, the Beneficiary shall conduct an audit of the Cost of the Work or notify the Engineer that it will not conduct an audit.

§ 12.2.2.1 If any party conducts an audit of the Cost of the Work, the party shall, within 30 days after completion of the audit, submit a written report based upon the auditors' findings to the Engineer.

§ 12.2.2.2 Within seven days after receipt of the written report described in Section 12.2.2.1, or receipt of notice that no party will conduct an audit, and provided that the other conditions of Section 12.2.1 have been met, the Engineer will either issue to the Owner (and the Beneficiary with respect to any Beneficiary directed Change Orders) a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Engineer's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 12.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Engineer is not responsible for verifying the accuracy of the Contractor's final accounting.

§ 12.2.2.3 If any auditors' report concludes that the Cost of the Work, as substantiated by the Contractor's final accounting, is less than claimed by the Contractor, the Contractor shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Engineer's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the auditors becoming binding on the Contractor. Pending a final resolution of the disputed amount, the Owner, or as applicable, the Beneficiary, shall pay the Contractor the amount certified in the Engineer's final Certificate for Payment.

§ 12.2.3 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Engineer's final Certificate for Payment, or as follows:

« »

§ 12.2.4 Intentionally deleted

§ 12.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

« » % « »

ARTICLE 13 DISPUTE RESOLUTION

§ 13.1 Initial Decision Maker

The Engineer will serve as Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to the Agreement, to serve as Initial Decision Maker.

§ 13.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

[« »] Arbitration pursuant to Section 15 of AIA Document A201–2017

[« »] Litigation in a court of competent jurisdiction

[« »] Other (*Specify*)

If the Owner and Contractor, or the Beneficiary and the Contractor as applicable, do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction and the substantially prevailing party shall be entitled to reasonable attorneys' fees and expenses to the extent deemed reasonable and appropriate under all the circumstances by the court having jurisdiction over such litigation.

ARTICLE 14 TERMINATION OR SUSPENSION

§ 14.1 Termination

§ 14.1.1 Subject to the Beneficiary's prior written approval, which may be given or withheld in the Beneficiary's sole discretion, the Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017. Absent Beneficiary's prior written approval, which may be given or withheld in Beneficiary's sole discretion, Contractor shall not have any right to terminate or suspend its obligations to complete the Work in the event of any Owner default and/or in the event of Owner's bankruptcy, insolvency, dissolution, or other circumstance affecting Owner's ability to pay Contractor under this Agreement. In all events, Contractor expressly assumes the obligation to complete the Work on Beneficiary's behalf and expressly waives any right under this Agreement, at common law or in equity to be paid by Beneficiary (other than with respect to Beneficiary directed Change Orders). Contractor acknowledges that it has entered into the Contract for good and valuable consideration.

§ 14.1.2 Termination by the Owner for Cause

§ 14.1.2.1 If, subject to Beneficiary's prior approval (which may be given or withheld in the Beneficiary's sole discretion), the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Contractor under Article 14 of AIA Document A201–2017 shall not exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Contractor to the date of termination;
- .2 Add the Contractor's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 14.1.2.2 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 14.1.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 14, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

§ 14.1.3 Intentionally deleted

« »

§ 14.2 Suspension

Subject to the Beneficiary's prior approval (which may be given or withheld in the Beneficiary's sole discretion), the Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Contract Sum and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Contractor's Fee as described in Article 5 and Section 6.4 of this Agreement.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 15.2.1 The Owner's representative:

(Name, address, email address and other information)

« »William Fellows
BTC Mall Associates, LLC
101 Cherry Street, Suite 440
Burlington, Vermont 05401
wfellows@devonwoodinvestors.com

« »
« »
« »
« »
« »

§ 15.2.2 The Beneficiary's Representative:

Name: Chapin Spencer, Director, City of Burlington Department of Public Works

Address: 645 Pine St Ste A, Burlington, VT 05401

Email Address: cspencer@burlingtonvt.gov

§ 15.3 The Contractor's representative:

(Name, address, email address and other information)

Scott Ireland
193 Industrial Avenue
Williston, VT 05495
SCOTT@SDIRELAND.COM

« »
« »
« »
« »
« »

§ 15.4 No party's representative shall be changed without ten days' prior notice to the other parties.

§ 15.5 Insurance and Bonds

§ 15.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A102™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents. The Beneficiary shall be an additionally named insured in all required policies of insurance.

§ 15.5.2 The Contractor shall provide payment and performance bonds as set forth in AIA Document A102™–2017 Exhibit A, and elsewhere in the Contract Documents. The Beneficiary shall be a named beneficiary and shall be entitled to rely upon and enforce all such bonds.

§ 15.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

« »

§ 15.7 Other provisions: This Contract may not be amended by the Owner and Contractor without the prior written approval of the Beneficiary, which shall not be unreasonably withheld or delayed, except with respect to the material terms hereof the modification of which are expressly subject to the Beneficiary's sole discretion

§ 15.8 This Agreement may be executed in any number of counterparts, any or all of which may contain the signatures of less than all the parties, and all of which shall be construed together as but a single instrument and shall be binding on the Parties as though one originally executed document. Signatures to this Agreement transmitted by electronic means shall be valid and effective to bind the party so signing.

« »

ARTICLE 16 ENUMERATION OF CONTRACT DOCUMENTS

§ 16.1 This Agreement is comprised of the following documents:

- .1 AIA Document A102™–2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A102™–2017, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™–2017, General Conditions of the Contract for Construction
- .4 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

(Insert the date of the E203-2013 incorporated into this Agreement.)

« »

- .5 Drawings [to be provided prior to execution]

Number	Title	Date

- .6 Specifications

Section	Title	Date	Pages

- .7 Addenda, if any:

Number	Date	Pages

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 16.

- .8 Other Exhibits:
(Check all boxes that apply.)

[« »] AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

« »

[« »] The Sustainability Plan:

Title	Date	Pages

[« X »] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
Burlington Standard Contract Conditions for Construction Contractors.			

To the extent of any inconsistency between the Burlington Standard Contract Conditions for Construction Contractors and any other Contract Document, the conditions of the Burlington Standard Contract Conditions for Construction Contractors shall prevail.

- .9 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

« Escrow Agreement and associated documents »

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

By: RD Burlington Associates LLC,
Its Sole Member

By: Devonwood City Place Investors, LLC,
Its Managing Member

By: Donald F Sinex, LLC,
Its Managing Member

(Printed name and title)

CONTRACTOR (Signature)

Scott Ireland, CEO

(Printed name and title)

Beneficiary: City of Burlington, Miro Weinberger, Mayor

20417888.5

Exhibit D

Advanced Preliminary Budget

[to be attached upon Release from Escrow]

Exhibit E

Form of Agreement Memorializing the Terms of Section 4(e)

Attached

Memorandum of Agreement

This Memorandum of Agreement (“Memorandum”) dated _____, 20__ is made by and between the **City of Burlington**, a Vermont municipal corporation (the “City”) and **BTC Mall Associates LLC**, a Delaware limited liability company (“Owner”). Each is referred to individually as a “Party” and collectively as the “Parties.”

Background

A. Owner owns certain real property depicted as Parcel 2, Parcel 4 and Parcel 5 on a plan entitled “Lot Line Adjustment for BTC Mall Associates LLC, 101 Cherry Street, Burlington, Vermont” prepared by LATITUDES Land Surveying dated January 9, 2017, last revised January 24, 2017, consisting of 1 sheet, recorded in Map Slide 533B of the City of Burlington Land Records (the “Plan”), numbered 49 Church Street, Burlington, Vermont, Parcel No. 044-4-004-000 and 75 Cherry Street, Burlington, Vermont, Parcel No. 044-4-033-000, which was formerly improved with a parking garage (together, the “Larger BTC Property”). The Larger BTC Property is improved with a portion of a retail shopping mall; it was formerly improved with a large retail shopping mall known as “Burlington Town Center” and a parking garage, and was acquired by Owner by Special Warranty Deed dated December 16, 2013 and recorded in Volume 1239 at Page 621 of the City of Burlington Land Records. Parcel 2, as shown on the Plan, is referred to herein as the “BTC Property.”

B. The Parties have entered into an Amended and Restated Development Agreement (the “Agreement”) dated _____, 2021, with respect to Owner’s redevelopment of the BTC Property with a project more particularly described therein (the “Revised Project”). Capitalized terms used in this Memorandum and not defined shall have the meanings given in the Agreement.

C. Certain elements of the Revised Project are described and referred to in the Agreement as the “Private Improvements”, certain elements of the Revised Project are described and referred to in the Agreement as the “Public Improvements” and certain elements of the Revised Project are described and referred to in the Agreement as the “Additional Public Improvements”.

D. The Agreement contemplates that the City will incur municipal bond debt within its Waterfront Tax Increment Financing District (the “Waterfront TIF District”) to finance certain costs associated with the Public Improvements and the Additional Public Improvements; specifically, the Agreement contemplates that the City will use such municipal bond debt to (1) directly pay for or reimburse itself for certain costs in connection with the Public Improvements and the Additional Public Improvements and (2) reimburse Owner for certain costs incurred by Owner in connection with the Public Improvements and the Additional Public Improvements (collectively, the “TIF Costs”), and the Agreement acknowledges that the tax increment generated by the Private Improvements must be sufficient to service the debt incurred by the City to pay the TIF Costs.

E. To ensure that the tax increment generated by the Private Improvements will be sufficient to service the debt incurred by the City to pay the TIF Costs, the Agreement authorizes the City to establish a minimum assessed value of the Larger BTC Property upon completion of the Revised Project so that sufficient tax increment is generated to pay the debt service on the municipal bonds, in the manner described therein and memorialized by this Memorandum.

The foregoing recitals and the following information accurately reflects the agreement between the Parties contained in the Agreement with respect to the matters described above:

1. The Parties acknowledge that the tax increment generated by the real property owned by Owner numbered 101 Cherry Street, Burlington, Vermont and identified as Parcel No. 044-4-004-001, which is improved with a four story mixed-use (retail/office) building, is also (i.e., in addition to the Larger BTC Property) legally permitted to contribute to the payment of debt service on the municipal bonds issued to finance the City's payment of the TIF Costs under and in accordance with the Agreement.
2. The City will assess the Larger BTC Property and 101 Cherry Street using the normal assessment procedure required by applicable state law, provided that if the City finds it necessary to ensure that the total tax increment generated by the Private Improvements, by those portions of the Larger BTC Property that are not part of the Revised Project, and by 101 Cherry Street is sufficient to pay the debt service on the municipal bonds issued to finance the City's payment of the TIF Costs under and in accordance with the Agreement, the City shall establish the minimum assessed value of the Larger BTC Property so that sufficient tax increment is generated to pay the debt service on the municipal bonds, and the City shall provide Owner with documentation that reasonably substantiates the assessed value of the Larger BTC Property established by the City for such purposes.
3. Any such minimum assessment of the Larger BTC Property shall only be in effect during the period of municipal bond repayment and only while necessary to ensure the total tax increment generated by the Private Improvements is sufficient to pay the debt service on the municipal bonds.
4. Owner agrees not to appeal the minimum assessment of the Larger BTC Property in an effort to reduce it below the value established by the City pursuant to the agreement memorialized by this Memorandum, and Owner shall pay property taxes based upon at least that minimum assessed value during the period of municipal bond repayment regardless whether any portion of the Larger BTC Property is owned by an entity that is statutorily exempt from property taxation or that is subject to statutorily limited or reduced property taxation. The Owner's agreement to pay such property taxes and not to appeal such assessment during the period of municipal bond repayment is hereby established as a covenant binding upon Owner and its successors and assigns running with title to the Larger BTC Property until such time as the municipal bonds shall have been paid in full.
5. This Memorandum shall be executed by the Parties and recorded in the City of Burlington land records and is intended to provide notice to third parties of the agreements contained in the Agreement and described herein. A copy of the Agreement is maintained at the offices of each Party, including at City Hall, Burlington, Vermont. The agreement memorialized by this Memorandum shall be a contractual covenant binding upon Owner and its successors and assigns, running with the title to the Larger BTC Property Property regardless of the tax exempt status of the owner of any portion of the Revised Project or the Larger BTC Property. This Memorandum is not intended to amend or modify the terms and conditions of the Agreement. To the extent that the terms and conditions of this Memorandum differ from the terms and conditions of the Agreement, the terms and conditions of the Agreement shall govern and prevail.

Signature Page to Follow

In Witness Whereof, this Memorandum is executed by the duly authorized officers or representatives of the Parties as of the date first set forth above.

BTC Mall Associates LLC

By: RD Burlington Associates LLC, Its Sole Member

By: Devonwood City Place Investors, LLC, Its Managing Member

By: _____
Name: Donald F. Sinex
Title: Managing Member

STATE OF _____
_____ COUNTY, SS.

At _____, in said County and State, this ____ day of _____, 2021 personally appeared Donald F. Sinex, to me known, being the Managing Member of Devonwood City Place Investors, LLC, being the Managing Member of RD Burlington Associates LLC, being the sole Member of BTC Mall Associates LLC, and he acknowledged this instrument, by him signed, to be his free act and deed individually and on behalf of the entities on which he acted.

Before me _____
Notary Public

Commission Expires:

Commission Number:

City of Burlington

By: _____
Miro Weinberger, Mayor

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

At Burlington, in said County and State, this ____ day of _____, 2021 personally appeared Miro Weinberger, to me known, being the Mayor of the City of Burlington, and he acknowledged this instrument, by him signed, to be his free act and deed and the free act and deed of the City of Burlington.

Before me _____
Notary Public

Commission Expires:

Commission Number:

LENDER'S CONSENT TO MEMORANDUM OF AGREEMENT

THE UNDERSIGNED, RSE BURLINGTON, LLC, a Delaware limited liability company ("Lender"), is the beneficiary under that certain Mortgage, Security Agreement, Assignment of Leases and Rents, Financing Statement and Fixture Filing executed and delivered by BTC MALL ASSOCIATES, LLC, a Delaware limited liability company, to the Lender, dated as of September 3rd, 2020, and recorded in Book 1533, Pages 315-334 of the City of Burlington Land Records (as the same may be amended, supplemented or otherwise modified from time to time, including any other instruments executed and delivered in renewal, extension, rearrangement or otherwise in replacement of such Mortgage, Security Agreement, Assignment of Leases and Rents, Financing Statement and Fixture Filing (the "Mortgage"). The Lender hereby consents to the terms and provisions of the foregoing Memorandum of Agreement, and the underlying agreement, including all exhibits thereto, and agrees that the operation, lien and effect of the Mortgage shall be subject and subordinate to the operation, lien and effect of the foregoing Memorandum of Agreement, including all exhibits thereto.

LENDER

RSE BURLINGTON, LLC, a Delaware
limited liability company

By: _____

Its Duly Authorized Agent

STATE OF ILLINOIS

COOK COUNTY, ss.

At Chicago, Illinois, this __ day of _____, 2021, _____, duly authorized agent of RSE BURLINGTON, LLC, personally appeared and s/he acknowledged this instrument, by her/him sealed and subscribed, to be her/his free act and deed and the free act and deed of RSE BURLINGTON, LLC, before me.

Print Name: _____

Notary Public

Commission No. _____

My Commission Expires: _____

Exhibit F

Form of Stormwater Memorandum of Understanding

Attached

MEMORANDUM OF UNDERSTANDING AND AGREEMENT
FOR STORMWATER SYSTEM OPERATION AND MAINTENANCE

This Memorandum of Understanding and Agreement For Stormwater System Operation and Maintenance (“Agreement”) dated _____ is entered into by and between the **City of Burlington**, a Vermont Municipal Corporation, acting by and through its Department of Public Works (the “City”), and **BTC Mall Associates LLC**, a Delaware limited liability company (“Owner”) and its successors or assigns. Each is referred to individually as a “Party” and collectively as the “Parties.”

Background

A. The redevelopment (the “Project”) of the real property depicted as Parcel 1, Parcel 2 and Parcel 3 (referred to herein as “Parcel 1”, “Parcel 2”, and “Parcel 3” respectively) on a plan entitled “Lot Line Adjustment for BTC Mall Associates LLC, 101 Cherry Street, Burlington, Vermont” prepared by LATITUDES Land Surveying dated January 9, 2017, last revised January 24, 2017, consisting of 1 sheet, recorded in Map Slide 533B of the City of Burlington Land Records (the “Plan”), which was formerly improved with a portion of the retail shopping mall known as “Burlington Town Center” and a parking garage, and which, in connection with the Project, is now improved with or in the process of being improved with public streets on Parcels 1 and 3 and three newly constructed mixed-use buildings and a parking garage on Parcel 2, included the construction of a stormwater system consisting of catch basins with sumps, manholes, underground piping, a pre-treatment forebay, underground storage and attenuation tanks, and sand filters, all of which discharge stormwater by a controlled outlet and bypass structure to the municipal storm sewer system that discharges to Lake Champlain (the “Stormwater System”). Owner acquired Parcel 1, Parcel 2 and Parcel 3 by Special Warranty Deed dated December 16, 2013 and recorded in Volume 1239 at Page 621 of the City of Burlington Land Records, and conveyed Parcel 1 and Parcel 3 to the City by Warranty Deed dated [____], 2021 and recorded in Volume ____ at Page ____ of the City of Burlington Land Records.

B. The Project received authorization to discharge stormwater via the Stormwater System in accordance with Vermont General Permit 3-9015 from the Vermont Agency of Natural Resources, Department of Environmental Conservation (the “Agency”) by Permit Number 7760-9015 issued on June 5, 2017 (the “Permit”), which requires the annual inspection and certification of the Stormwater System and the payment of annual fees.¹

C. Approximately ____ sq. ft. of impervious surface area is drained by the Stormwater System.

D. The City owns Parcel 1 and Parcel 3, which includes ____ sq. ft., or ____%, of the impervious surface area drained by the Stormwater System and Owner owns ____ sq. ft., or ____%, of such impervious surface area drained by the Stormwater System.

E. In connection with Owner’s conveyance of Parcel 1 and Parcel 3 to the City, the City has agreed to become a co-permittee of the Permit on the condition that Owner enter into this Agreement in order for the Parties to agree upon their respective obligations with respect to the maintenance, repair and replacement of the Stormwater System and with respect to their obligations as co-permittees of the Permit.

Now, therefore, in consideration of the foregoing and other good and valuable consideration, and meaning and intending to be bound hereby, the City and Owner hereby covenant and agree as follows:

1. The Parties agree that they will be co-permittees under the Permit.

¹ Note to Draft: Reference to Permit to be updated, as applicable, at time of signing.

2. Owner shall be solely responsible for the maintenance, repair and replacement of the underground piping, pre-treatment forebay, sumps, underground storage and attenuation tanks, and sand filters that comprise elements of the Stormwater System, including any and all costs related thereto, and Owner shall be solely responsible for the maintenance of all components of the Stormwater System located on property owned by Owner (including Parcel 2), including any and all costs related thereto.

3. The City shall be solely responsible for the maintenance (cleaning), repair and replacement of the catch basins and manholes located within the right-of-way of Parcel 1, Parcel 3 or within other land or easements owned by the City that comprise elements of the Stormwater System, including any and all costs related thereto. The City will not seek to recover from the Owner any costs incurred by the City to maintain such catch basins and manholes other than the standard stormwater fee generally assessed by the City to owners of property with impervious surfaces.

4. Owner shall be responsible for the payment of all fees and costs to the Agency arising out of the Permit, including but not limited to permit application fees, renewal fees, administrative processing fees, fines or penalties assessed by the Agency under the Permit. Notwithstanding the foregoing, in accordance with its pro-rata share of impervious surface area covered by the Permit, Owner shall pay ___% of the annual operating fee required by the Permit, and the City shall pay ___% of the annual operating fee required by the Permit. Owner shall initially pay the annual operating fee to the Agency and the City shall reimburse Owner for the City's share of the annual operating fee within thirty (30) days of its receipt of an invoice therefor together with backup documentation substantiating the invoiced amount.

5. Owner shall, on behalf of both Parties, manage and coordinate the Parties' compliance with the obligations of the Permit and the laws, rules and regulations pursuant to which the Permit has been issued, and Owner is hereby authorized, and Owner agrees, to do or cause to be done all matters required for Permit compliance on behalf of the Parties except as otherwise set forth in this Agreement. Without limiting the foregoing, Owner shall engage a licensed and qualified engineer to perform the inspections required by the Permit, to file the reports required by the Permit and to file applications to renew the Permit prior to its expiration, and except as set forth in this Agreement shall engage such contractors as may be necessary to perform any maintenance or construction work that may be required for the Stormwater System to be in compliance with the requirements of the Permit and the laws, rules and regulations pursuant to which the Permit has been issued.

6. Each Party shall be responsible for performing any work resulting or arising from its negligence, willful misconduct, failure to abide by the Permit conditions or failure to comply with applicable law, and each Party shall be responsible for paying any fines or penalties which may be assessed against the Parties by the Agency resulting or arising from its negligence, willful misconduct, failure to abide by the Permit conditions or failure to comply with applicable law, provided that the City's liability under this provision is limited to the extent that compliance is the City's obligation or responsibility under this Agreement.

7. The Parties agree that conformance with any future changes to the Permit or amendments to the Permit shall be the responsibility of the Owner. If new or amended Permit requirements require changes, upgrades or alterations to the Stormwater System, Owner shall perform any such changes, upgrades or alterations to the Stormwater System, and the City agrees to work cooperatively with Owner so it can maintain Permit compliance and conform the Stormwater System to future conditions of the Permit or any Permit amendments. Notwithstanding the foregoing, so long as the City shall have agreed in advance to the scope of work, cost and manner of performance associated with any changes, upgrades or alterations to the Stormwater System required by the Permit or future amendments thereto, then each Party shall pay its share of the costs thereof in accordance with its pro-rata share of impervious surface area covered by the Permit, meaning that Owner shall pay ___% of the cost of such required changes, upgrades or alternations, and the City shall pay ___% of the cost of such required changes, upgrades or alternations. Owner shall initially pay the cost of such required changes, upgrades or alternations and the City shall reimburse Owner

for the City's share of the cost within thirty (30) days of its receipt of an invoice therefor together with backup documentation substantiating the invoiced amount.

8. With regard to any claims for injury to or death of persons (including employees and agents of the Parties) or damage to property which are caused by or are claimed to have been caused by or arising from the maintenance, reinstallation, replacement, relocation, removal or maintenance of the Stormwater System, each Party shall, to the fullest extent as provided by law, indemnify, defend, protect and save the other harmless from all such claims when caused in whole or in part by the negligence or willful misconduct of such Party, its employees, agents or contractors, except to the extent caused by the gross negligence or willful misconduct of the other Party, its employees, agents or contractors

9. This Agreement presumes that each Party will fully perform all of the conditions outlined above. If, after an inspection is completed, it is determined that repairs and/or maintenance are required, or if either Party asserts that the other is in breach of this Agreement for a failure to comply with a stated condition(s), then the first party shall give written notice to the second party of the breach with request for a written correction plan to be submitted within ten (10) business days of the original notice date. The second party shall submit a plan that includes the necessary work to be performed with a deadline for completion that takes unfavorable weather conditions into account. A failure to complete the planned correction(s) as outlined, shall be considered a default of the party's obligations under this Agreement. In the event of a failure by Owner to perform its maintenance responsibilities as noted above, the City may, if it determines that it is necessary, enter onto the property of the Owner (including Parcel 2) in order to perform or complete the obligation that is in default. Owner agrees that the City shall have permission to enter onto the property of the Owner (including Parcel 2) to perform the obligations, and to assess all costs of such completion to Owner, include reasonable attorney's fees and other costs.

10. This Agreement shall be effective until the expiration of the Permit, and shall be automatically renewed for the term of any successor permit. Any amendments to this Agreement must be in writing, signed by the party to be charged and acknowledged. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns, and shall run with title to Parcel 1, Parcel 2 and Parcel 3 respectively.

Signature Page to Follow

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

BTC Mall Associates LLC

By: RD Burlington Associates LLC, Its Sole Member

By: Devonwood City Place Investors, LLC, Its
Managing Member

Witness

By: _____
Name: Donald F. Sinex
Title: Managing Member

STATE OF _____
_____ COUNTY, SS.

At _____, in said County and State, this ____ day of _____, 20__ personally appeared Donald F. Sinex, to me known, being the Managing Member of Devonwood City Place Investors, LLC, being the Managing Member of RD Burlington Associates LLC, being the sole Member of BTC Mall Associates LLC, and he acknowledged this instrument, by him signed, to be his free act and deed individually and on behalf of the entities on which he acted.

Before me _____
Notary Public
Commission Expires:
Commission Number:

City of Burlington

Witness

By: _____
Name:
Title:

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

At Burlington, in said County and State, this ____ day of _____, 20__ personally appeared _____, to me known, being the _____ of the City of Burlington, and he acknowledged this instrument, by him signed, to be his free act and deed and the free act and deed of the City of Burlington.

Before me _____
Notary Public
Commission Expires:
Commission Number:

Exhibit G

Form of Right of First Offer

Attached

Right of First Offer

THIS RIGHT OF FIRST OFFER (this "Agreement") is made and granted by the City of Burlington (the "City") to and for the benefit of BTC Mall Associates, LLC, a Delaware limited liability company ("BTC"), its successors and assigns, effective as of the ____ day of _____, 2021 (the "Effective Date").

WHEREAS, on the Effective Date, BTC conveyed to the City by warranty deed dated as of the Effective Date and recorded herewith in the City of Burlington Land Records, certain real property depicted as "Parcel 1" and "Parcel 3" (each, a "Street Parcel", together, the "Street Parcels") on a plan entitled "Lot Line Adjustment for BTC Mall Associates LLC, 101 Cherry Street, Burlington, Vermont" prepared by LATITUDES Land Surveying dated January 9, 2017, last revised January 24, 2017, consisting of 1 sheet, recorded in Map Slide 533B of the City of Burlington Land Records (the "Plan");

WHEREAS, BTC owns "Parcel 2" as depicted on the Plan (the "CityPlace Parcel"), which lies in between and adjacent to the Street Parcels; and

WHEREAS, on the Effective Date, BTC and the City entered into that certain Amended and Restated Development Agreement which provides, in part, that the City shall grant BTC a right of first offer with respect to the Street Parcels upon the terms and conditions described herein;

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Right of First Offer. If the City shall desire to sell or transfer either or both of the Street Parcels for cash consideration, the City shall first offer to sell such Street Parcel(s) to BTC (the "Right of First Offer") in accordance with the following: (i) the City shall deliver to BTC a written notice specifying the Sale Terms (as hereinafter defined) (the "Sale Notice") upon which the City desires to sell or transfer such Street Parcel(s); and (ii) BTC shall then have the right to purchase such Street Parcel(s) on such Sale Terms (or such other terms as the City and BTC may mutually agree), and on the terms set forth below, by notifying the City in writing of its exercise of the Right of First Offer delivered not later than ten (10) days after BTC's receipt of the Sale Notice from the City ("Notice of Acceptance").

2. BTC's Obligation if Right Exercised. If BTC timely exercises the Right of First Offer, then BTC shall have the right and obligation to purchase the Street Parcel(s) upon the Sale Terms (or such other terms as the City and BTC may mutually agree) no later than sixty (60) days following BTC's delivery of the Notice of Acceptance. The City agrees that if BTC timely exercises the Right of First Offer, BTC may assign its purchase right to a newly formed entity owned or controlled by BTC for the purpose of owning the Street Parcel(s). The purchase and sale of the Street Parcel(s) shall occur in accordance with the following provisions:

a. Unless otherwise agreed, and subject to extension as provided below, the closing for the transfer of title and possession of the Street Parcel(s) and for payment of the Purchase Price shall be no later than sixty (60) days after BTC's delivery of the Notice of Acceptance.

b. At the closing, the City shall deliver to BTC, against BTC's payment of the purchase price, a Warranty Deed, Vermont Property Transfer Tax Return, and such other closing documents, duly executed and, if appropriate, acknowledged by the City, all as the City's counsel determines to be reasonably required to convey marketable title to BTC. BTC shall pay the applicable Vermont Property Transfer Tax.

c. Marketable title as used herein shall be defined with reference to the Vermont Record Title Act (27 V.S.A. §601, et seq.), Vermont case law and the Vermont Title Standards then in effect.

3. Waiver or Rejection; Expiration. If BTC rejects the Right of First Offer, does not timely exercise the Right of First Offer or does not satisfy the requirements of the Sale Terms (as defined below), then the City shall have the right to sell the Street Parcel(s) to a bona fide third-party free and clear of any claim by BTC for a price in excess of ninety percent (90%) of that set forth in the Sale Terms, and upon such other terms and conditions as are set forth in the Sale Terms. In connection with any such sale pursuant to this Right of First Offer, the Closing Date of the sale must take place within one (1) year after the later to occur of (i) BTC rejecting the Right of First Offer, (ii) failing to timely exercise the Right of First Offer or (iii) failing to satisfy the requirements of the Sale Terms (the "Marketing Period"). In any such instance, BTC shall execute such instruments as the City may reasonably request to evidence its waiver and release of the Right of First Offer. The City may also record a copy of its certified mail registration of the Sale Notice as presumptive evidence of its compliance with the requirements of this provision as a further or alternative means of evidencing BTC's waiver and release of the Right of First Offer. In the event that the City, in its sole discretion, desires to accept an offer from a prospective third party purchaser during such Marketing Period to purchase the Street Parcel(s) at a price less than ninety percent (90%) of the price set forth in the Sale Terms, then the City must once again deliver a Sale Notice to the BTC, and the provisions of Sections 1 and 2 above and the first sentence of this Section 3 shall apply.

4. Sale Terms. As used herein, the term "Sale Terms" shall mean: the purchase price; terms of payment of the purchase price (including any deposits); contingencies including, for example, due diligence, inspection or financing contingencies; closing date; settlement costs; expenses and adjustments; conditions upon which the proposed transfer is predicated, including the transferee's post-closing use and development of the property; and any other terms a commercially reasonable seller and buyer of real property would include in connection with the consummation of the sale and purchase of real property, taking into account that the seller is a municipality that may value a public benefit more highly than cash consideration.

5. Exceptions. The Right of First Offer shall not apply to a sale or transfer by the City to: (i) a governmental entity; or (ii) any financing institution as security for any loan or other obligation of the City.

6. Waiver. The failure of any party to insist on strict performance of any of the provisions of this Agreement or to exercise any right it grants will not be construed as a relinquishment of any right or a waiver of any provision of this Agreement. No waiver of any provision or right shall be

valid unless it is in writing and signed by a duly authorized representative of the party granting the waiver.

7. Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted, applicable laws and regulations. If any provisions of this Agreement, or the application thereof to any person, entity, or circumstance, for any reason and to any extent, is invalid or unenforceable, neither the remainder of this Agreement, nor the application of such provision to other persons, entities or circumstances or other instruments will be affected thereby, but rather, the same will be enforced to the greatest extent permitted by law.

8. Successors in Title to CityPlace Parcel. The Parties agree that this Agreement is intended to and shall run with the CityPlace Parcel, and shall bind and inure to the benefit of BTC and its successors in title. For clarity, the transfer of one or more of the Street Parcels to BTC, or its successors in title to the CityPlace Parcel, or to another party following the City's compliance with the requirements of this Agreement, will forever terminate the effect of this Agreement with respect to any future transfer.

9. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Vermont, without regard to its conflicts of law rules. The parties consent to and submit to in personam jurisdiction and venue in the State of Vermont, County of Chittenden, and in the U.S. District Court for the District of Vermont. The parties assert that they have purposefully availed themselves of the benefits of the laws of the State of Vermont and waive any objection to in personam jurisdiction on the grounds of minimum contacts, waive any objection to venue, and waive any plea of forum non conveniens. This consent to and submission to jurisdiction is with regard to any action related to this Agreement, regardless of whether the parties' actions took place in the State or elsewhere in the United States.

10. Counterparts. This Agreement may be executed in multiple counterparts, each of which will constitute an original, but all of which will constitute one document. Each person signing this Agreement on behalf of BTC and the City represents and warrants that he or she has full authority to do so and that this Agreement binds such party.

11. Recording. This Agreement shall be executed by the parties and recorded in the City of Burlington land records and is intended to provide notice to third parties of the agreements contained in the Agreement and described herein.

[Signature Page to Follow]

In Witness Whereof, this Agreement is executed by the duly authorized officers or representatives of the Parties as of the Effective Date.

BTC Mall Associates LLC

By: RD Burlington Associates LLC, Its Sole
Member

By: Devonwood City Place Investors, LLC, Its
Managing Member

By: _____
Name: Donald F. Sinex
Title: Managing Member

STATE OF _____
_____ COUNTY, SS.

At _____, in said County and State, this ____ day of _____, 2021 personally appeared Donald F. Sinex, to me known, being the Managing Member of Devonwood City Place Investors, LLC, being the Managing Member of RD Burlington Associates LLC, being the sole Member of BTC Mall Associates LLC, and he acknowledged this instrument, by him signed, to be his free act and deed individually and on behalf of the entities on which he acted.

Before me _____
Notary Public
Commission Expires:
Commission Number:

City of Burlington

By: _____
Miro Weinberger, Mayor

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

At Burlington, in said County and State, this ____ day of _____, 2021 personally appeared Miro Weinberger, to me known, being the Mayor of the City of Burlington, and he acknowledged this instrument, by him signed, to be his free act and deed and the free act and deed of the City of Burlington.

Before me _____
Notary Public
Commission Expires:
Commission Number:

Exhibit H

Form of Labor Compliance Certificate

Attached

Certification of Compliance with Labor Standards

Whereas, BTC Mall Associates, LLC ("Owner") and the City of Burlington (the "City") have entered into an Amended and Restated Development Agreement dated _____, 2021 (the "Development Agreement") in connection with the redevelopment of the Burlington Town Center property (the "Project").

Whereas, as material consideration for the City's entry into the Development Agreement, Sections 5(b)(vii) and 5(b)(viii) of the Development Agreement require that Owner "shall hire contractors and subcontractors who pay appropriate wages, properly classify employees, obey labor laws, participate (where applicable) in formal apprenticeship training programs, and provide employer funded health and retirement benefits."

Whereas, the undersigned is an authorized agent of (the "Contractor"), which has been hired as a contractor or subcontractor in connection with the Project.

Now, therefore, in recognition and consideration of the foregoing, the Contractor hereby certifies under oath as follows:

1. At all times in connection with the Project, the Contractor:
 - Pays and shall pay appropriate wages;
 - Properly classifies and shall properly classify employees;
 - Obeys and shall obey labor laws;
 - Participates and shall participate (where applicable) in formal apprenticeship training programs; and
 - Provides and shall provide employer-funded health and retirement benefits.
2. A copy of this Certification shall be posted in the workplace(s) or other location(s) where Contractor's Project employees work.
3. Contractor will provide verification of an employee's compensation, produce payroll or health insurance enrollment records, or provide other relevant documentation (including that of any subcontractor), as deemed necessary by the City's Chief Administrative Officer, within ten (10) business days from receipt of a request by the City.
4. Contractor will cooperate in any investigation conducted by the Office of the City Attorney with respect to Contractor's compliance with the contents of this Certification.
5. Contractor will not retaliate (nor allow any subcontractor to retaliate) against an employee or other person because an employee has exercised rights or the person has cooperated in an investigation conducted pursuant to this Certification.

Date: _____

By: _____

Name: _____

Contractor

STATE OF _____

_____ COUNTY, SS.

At _____, in said County and State, this ____ day of _____, 2021
personally appeared _____, to me known, being the _____ of
_____, and s/he acknowledged this instrument, by him/her signed, to be
his/her free act and deed individually and on behalf of the entity on which he acted.

Before me _____

Notary Public

Commission Expires:

Commission Number:

Exhibit I

Reserved

Exhibit J

Form of Final Design and Specifications Sheet

Attached

Final Design and Specifications Sheet

Whereas, BTC Mall Associates, LLC ("Owner") and the City of Burlington (the "City") have entered into an Amended and Restated Development Agreement dated _____, 2021 (the "Development Agreement") in connection with the redevelopment of the Burlington Town Center property (the "Project"). Capitalized terms used but not otherwise defined herein shall have the meanings given to such terms in the Development Agreement.

Whereas, pursuant to Section 3(h)(ii)(A) of the Development Agreement, the parties have agreed that before putting bid packages together for any hard construction costs, the parties would memorialize their agreement as to the final design and specifications for the Work.

Now, therefore, in recognition and consideration of the foregoing, the parties agree that the final design and specifications for the Work are set forth on the plan set entitled "[NAME OF PROJECT]" prepared by "[NAME OF ENGINEER/DESIGNER]" dated "[DATE OF PLANS]" containing [NUMBER] () of Sheets.

This Final Design and Specifications Sheet may be signed in counterparts.

BTC Mall Associates LLC

By: RD Burlington Associates LLC, Its Sole Member
By: Devonwood City Place Investors, LLC, Its
Managing Member

By: _____
Name: Donald F. Sinex
Title: Managing Member

City of Burlington

By: _____
Name: _____
Title: _____

Exhibit K

Form of Memorandum of Agreement

Attached

MEMORANDUM OF AMENDED AND RESTATED DEVELOPMENT AGREEMENT

THIS MEMORANDUM OF AMENDED AND RESTATED DEVELOPMENT AGREEMENT (“Memorandum”) is made as of _____, 2021 (“Effective Date”), by and between the City of Burlington, a Vermont municipal corporation (the “City”) and BTC Mall Associates LLC, a Delaware limited liability company (“BTC”, and together, the “Parties”).

RECITALS

- A. BTC owns certain real property depicted as Parcel 2, Parcel 4 and Parcel 5 on a plan entitled “Lot Line Adjustment for BTC Mall Associates LLC, 101 Cherry Street, Burlington, Vermont” prepared by LATITUDES Land Surveying dated January 9, 2017, last revised January 24, 2017, consisting of 1 sheet, recorded in Map Slide 533B of the City of Burlington Land Records (the “Plan”), numbered 49 Church Street, Burlington, Vermont, Parcel No. 044-4-004-000 and 75 Cherry Street, Burlington, Vermont, Parcel No. 044-4-033-000 (together, the “Larger BTC Property”). The Larger BTC Property is improved with a portion of a retail shopping mall; it was formerly improved with a large retail shopping mall known as “Burlington Town Center” and a parking garage. Parcel 2, as depicted on the Plan, is referred to herein as the “BTC Property”.
- B. City owns, as public right of way, certain real property depicted as Parcel 1 and Parcel 3 on the Plan by virtue of the Warranty Deed of Owner to the City dated as of the Effective Date and to be recorded in the City of Burlington Land Records (collectively, the “City Property”).
- C. The Parties entered into a Development Agreement dated as of October 26, 2017, as amended by Letter Agreement dated August 27, 2018 and fully executed on September 7, 2018 (as amended, the “Original Development Agreement”) with respect to the redevelopment of the BTC Property with a certain mixed-use project described and defined therein, which was approved by the Burlington Development Review Board (“DRB”) by findings of fact and decision for File No. ZP17-0662CA/MA dated March 17, 2017, as modified by Judgment Order dated July 17, 2017 executed by the State of Vermont Superior Court, Environmental Division, in the matter captioned Devonwood Investors, LLC 75 Cherry Street, Docket No. 39-4-17 Vtec. The project approved by such DRB approval is referred to in this Memorandum as the “Original Project”.
- D. BTC demolished certain portions of the former Burlington Town Center in 2017 and has not performed any construction activity on the BTC Property since that time.
- E. BTC is now seeking approval to modify the redevelopment plans for the BTC Property from the Original Project.
- F. On the Effective Date, the Parties executed an Amended and Restated Development Agreement (the “A&R DA”), which amends and restates the Original Development Agreement in its entirety to facilitate BTC’s development of the BTC Property and the City Property with the Revised Project, as defined in the A&R DA.

- G. The Parties now desire to enter into and record this Memorandum to provide record notice of the A&R DA.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Incorporation of A&R DA.** This Memorandum is prepared for the purpose of providing record notice of the A&R DA and the covenants and agreements contained therein, and is not a complete summary of the terms and conditions of the A&R DA. Provisions of this Memorandum shall not be used in interpreting provisions of the A&R DA. In the event of conflict between this Memorandum and the provisions of the A&R DA, the provisions of the A&R DA shall control.
2. **Expiration.** Upon the termination of the A&R DA and payment of all amounts due and owing by each party to the other thereunder, the Parties shall execute and acknowledge an instrument in recordable form terminating this Memorandum of record.
3. **Miscellaneous.** The rights and obligations set forth herein shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, personal representatives, successors and assigns. This Memorandum may be executed in counterparts, each of which counterparts shall constitute an original and all of which counterparts shall constitute one fully executed Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Parties have entered into this Memorandum as of the date first hereinabove written.

BTC Mall Associates LLC

By: RD Burlington Associates LLC, Its Sole Member

By: Devonwood City Place Investors, LLC, Its Managing Member

By: _____
Name: Donald F. Sinex
Title: Managing Member

STATE OF _____
_____ COUNTY, SS.

At _____, in said County and State, this ____ day of _____, 2021 personally appeared Donald F. Sinex, to me known, being the Managing Member of Devonwood City Place Investors, LLC, being the Managing Member of RD Burlington Associates LLC, being the sole Member of BTC Mall Associates LLC, and he acknowledged this instrument, by him signed, to be his free act and deed individually and on behalf of the entities on which he acted.

Before me _____
Notary Public
Commission Expires:
Commission Number:

City of Burlington

By: _____
Miro Weinberger, Mayor

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

At Burlington, in said County and State, this ____ day of _____, 2021 personally appeared Miro Weinberger, to me known, being the Mayor of the City of Burlington, and he acknowledged this instrument, by him signed, to be his free act and deed and the free act and deed of the City of Burlington.

Before me _____
Notary Public
Commission Expires:
Commission Number:

**LENDER'S CONSENT TO MEMORANDUM OF AMENDED AND RESTATED
DEVELOPMENT AGREEMENT**

THE UNDERSIGNED, RSE BURLINGTON, LLC, a Delaware limited liability company ("Lender"), is the beneficiary under that certain Mortgage, Security Agreement, Assignment of Leases and Rents, Financing Statement and Fixture Filing executed and delivered by BTC MALL ASSOCIATES, LLC, a Delaware limited liability company, to the Lender, dated as of September 3rd, 2020, and recorded in Book 1533, Pages 315-334 of the City of Burlington Land Records (as the same may be amended, supplemented or otherwise modified from time to time, including any other instruments executed and delivered in renewal, extension, rearrangement or otherwise in replacement of such Mortgage, Security Agreement, Assignment of Leases and Rents, Financing Statement and Fixture Filing (the "Mortgage")). The Lender hereby consents to the terms and provisions of the foregoing Memorandum of Amended and Restated Development Agreement, and the underlying Amended and Restated Development Agreement, including all exhibits thereto, and agrees that the operation, lien and effect of the Mortgage shall be subject and subordinate to the operation, lien and effect of the foregoing Amended and Restated Development Agreement, including all exhibits thereto.

LENDER

RSE BURLINGTON, LLC, a Delaware
limited liability company

By: _____

Its Duly Authorized Agent

STATE OF ILLINOIS

COOK COUNTY, ss.

At Chicago, Illinois, this ___ day of _____, 2021, _____, _____, duly authorized agent of RSE BURLINGTON, LLC, personally appeared and s/he acknowledged this instrument, by her/him sealed and subscribed, to be her/his free act and deed and the free act and deed of RSE BURLINGTON, LLC, before me.

Print Name: _____

Notary Public

Commission No. _____

My Commission Expires: _____